









Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761115536013>





# CLAIM OF BRITISH SHIP "I'M ALONE"

CA1  
EA  
-33C4

## DOCUMENTS

### PRELIMINARY NOTE

Canadian Brief;

United States Answering Brief;

Canadian Statement with regard to Compensation;

Canadian Statement with regard to Ultimate Beneficial  
Ownership;

United States Statements with regard to Ultimate  
Beneficial Ownership and Compensation;

Final Report of Commissioners, dated 5th January,  
1935.



391152  
16.4.41



## PRELIMINARY NOTE

1. The documents filed by the Agents on behalf of the Governments of Canada and of the United States, in the *I'm Alone* proceedings, are compiled for the convenience of those who may be interested.

2. The documents are in the following order, each containing its own table of contents:—

Canadian Brief;

United States Answering Brief;

Canadian Statement with regard to Compensation;

Canadian Statement with regard to Ultimate Beneficial Ownership;

United States Statements with regard to Ultimate Beneficial Ownership and Compensation;

Final Report of Commissioners, dated 5th January, 1935.

3. The preliminary procedure in dealing with this claim was settled by a Memorandum dated the 22nd September, 1930, and approved by an exchange of Notes. This Memorandum is set forth in the Canadian Brief as Appendix B, at p. 51.

Pursuant to this procedure, the Canadian Agent formulated the Claim, which was dated the 26th February, 1931, and transmitted copies to the United States Agent and to each Commissioner. The Claim was set forth in the Canadian Brief as part of Appendix C, at pp. 53 to 57 inclusive.

The Agent for the United States formulated the Answer, which was dated the 8th July, 1931, and transmitted it to the Canadian Agent and to the Commissioners. The Answer contained as an annex a copy of a note of the Secretary of State of the United States to the British Ambassador, dated at Washington the 2nd February, 1927. These documents are set forth in the Canadian Brief as part of Appendix C, pp. 58 to 71 inclusive.

4. At the request of the Agents, the Commissioners met at Washington on the 28th January, 1932, and concurred in giving directions to the Agents with regard to further procedure. These Directions are set forth in the Canadian Brief as Appendix D, pp. 72 to 74 inclusive.



5. Pursuant to the Directions, the Canadian Brief and the United States Answering Brief were exchanged. No reply brief was submitted on behalf of the Canadian Government.

6. The Commissioners met at Ottawa in June 1933; and, after hearing counsel and considering the Briefs, concurred in a Joint Interim Report to the two Governments, which was dated the 30th June, 1933. This Report is set forth in the Canadian Statement with regard to Compensation, pp. 5 to 8 inclusive.

7. Pursuant to the provisions of the Joint Interim Report, the Statements were submitted by the Agents and the Commission met at Washington on December 28th, 1934, the hearing extending until the 3rd January, 1935. At this hearing witnesses were heard and consideration was also given to the documentary evidence. Arguments were submitted on behalf of the Governments by the Agents; and, after consideration, the final report to the Governments was signed by the Commissioners on the 5th January, 1935.

# CLAIM OF THE BRITISH SHIP "I'M ALONE"

---

BRIEF SUBMITTED ON BEHALF OF HIS MAJESTY'S  
GOVERNMENT IN CANADA IN RESPECT OF THE  
CLAIM OF THE BRITISH SHIP "I'M ALONE"  
UNDER THE PROVISIONS OF ARTICLE IV  
OF THE CONVENTION CONCLUDED THE  
23RD JANUARY, 1924, BETWEEN  
HIS MAJESTY AND THE UNITED  
STATES OF AMERICA

Submitted on Behalf of His Majesty's Government in Canada for  
the Joint Consideration of

The Honourable Willis Van Devanter

and

The Right Honourable Lyman Poore Duff



---

OTTAWA  
F. A. ACLAND  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
1933





## TABLE OF CONTENTS

	PAGE
Brief Statement of the Present Position.....	5
The First Question.....	9
The Second Question.....	12
The Third Question.....	18
Appendix A—International Correspondence, March and April, 1929 .....	21
Appendix B—Memorandum Outlining Procedure.....	51
Appendix C—Claim.....	53
Answer .....	58
Appendix D—Directions.....	72
Appendix E—Certain sections taken from Part I of the Mer- chant Shipping Act, 1894, including Sections: 1, 2, 3, 9, 25, 28, 56, 57, 58, 67, 69, 71, 72, 73, 74, 76, 91.....	75
Appendix F—International Correspondence and Other Docu- ments .....	83



**BRIEF SUBMITTED ON BEHALF OF HIS MAJESTY'S  
GOVERNMENT IN CANADA IN RESPECT OF  
THE CLAIM OF THE BRITISH SHIP "I'M  
ALONE" UNDER THE PROVISIONS OF ARTICLE  
4 OF THE CONVENTION CONCLUDED THE  
23rd JANUARY, 1924, BETWEEN HIS MAJESTY  
AND THE UNITED STATES OF AMERICA.**

---

The claim of the British ship *I'm Alone* advanced by His Majesty's Government in Canada was referred by the two Governments to the Honourable Willis Van Devanter and the Right Honourable Lyman Poore Duff for their joint consideration pursuant to the provisions of Article 4 of the Convention between His Britannic Majesty and the President of the United States of 23rd January, 1924. It arises out of the sinking of the *I'm Alone* on the high seas by the United States Coast Guard vessel *Dexter* on March 22nd, 1929, in the vicinity of latitude 25° 41' and longitude 90° 45' or more than two hundred miles from the United States coast.

The sinking of the vessel was discussed in correspondence between the Governments of Canada and the United States, particularly in notes from the United States Secretary of State to the Canadian Minister at Washington on 28th March and 17th April, 1929, and from the Canadian Minister to the United States Secretary of State on 9th April and 24th April, 1929 (Appendix A). The correspondence concluded with an agreement by the two Governments to submit the matter to arbitration under the said Convention. The Convention reads as follows:—

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India;

And the President of the United States of America;

Being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages;

Have decided to conclude a convention for that purpose;



And have appointed as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India;

The Right Honourable Sir Auckland Campbell Geddes, G.C.M.G., K.C.B., his Ambassador Extraordinary and Plenipotentiary to the United States of America;

The President of the United States of America;

Charles Evans Hughes, Secretary of State of the United States;

Who, having communicated their full powers found in good and due form, have agreed as follows:—

#### ARTICLE 1

The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters.

#### ARTICLE 2

(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavouring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offence against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavouring to commit the offence. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions, by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

### ARTICLE 3

No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions, on board British vessels voyaging to or from ports of the United States, or its territories or possessions, or passing through the territorial waters thereof, and such carriage shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

### ARTICLE 4

Any claim by a British vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by article 2 of this treaty or on the ground that it has not been given the benefit of article 3 shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the High Contracting Parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Claims Commission established under the provisions of the Agreement for the Settle-

ment of Outstanding Pecuniary Claims signed at Washington the 18th August, 1910, but the claim shall not, before submission to the tribunal, require to be included in a schedule of claims confirmed in the manner therein provided.

#### ARTICLE 5

This treaty shall be subject to ratification and shall remain in force for a period of one year from the date of the exchange of ratifications.

Three months before the expiration of the said period of one year, either of the High Contracting Parties may give notice of its desire to propose modifications in the terms of the treaty.

If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the treaty shall lapse.

If no notice is given on either side of the desire to propose modifications, the treaty shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the treaty, and to the provision that if such modifications are not agreed upon before the close of the period of one year, the treaty shall lapse.

#### ARTICLE 6

In the event that either of the High Contracting Parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present treaty the said treaty shall automatically lapse, and, on such lapse or whenever this treaty shall cease to be in force, each High Contracting Party shall enjoy all the rights which it would have possessed had this treaty not been concluded.

The present convention shall be duly ratified by His Britannic Majesty, and by the President of the United States of America, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at the City of Washington, this twenty-third day of January, in the year of our Lord one thousand nine hundred and twenty-four.

The procedure to be followed has been outlined in a memorandum dated 22nd September, 1930, (Appendix B) which has been approved by an exchange of notes. The memorandum provides for the formulation and transmission of the claim and the answer by the agents for the Dominion of Canada and the United States of America respectively. The claim and answer (Appendix C) have been exchanged and have been considered by the Commissioners who have given directions (Appendix D) respecting the course now to be pursued. Under the directions three preliminary questions of law that arise under the Convention are to be discussed. The first relates to the jurisdiction of the Commissioners; the second to the right of hot pursuit; and the third to the right to sink.

### THE FIRST QUESTION

This question is formulated in the directions issued by the Commissioners in the following terms:—

The first question is whether the Commissioners may enquire into the beneficial or ultimate ownership of the *I'm Alone* or of the shares of the corporation that owned the ship. If the Commissioners are authorized to make this enquiry, a further question arises as to the effect of indirect ownership and control by citizens of the United States upon the Claim: viz., whether it would be an answer to the Claim under the Convention, or whether it would go to mitigation of damages, or whether it would merely be a circumstance that should actuate the claimant Government in refraining from pressing the claim, in whole or in part.

It is submitted on behalf of Canada that the Commissioners may not enquire into the beneficial or ultimate ownership of the *I'm Alone* or of the shares of the corporation that owned the ship. Indirect or beneficial ownership and control by citizens of the United States would not be an answer to the claim or go in



mitigation of damages and unless it would afford a defence wholly or partially to the claim, evidence with regard thereto is not receivable. The Commissioners should not sit in review on the exercise of discretion by the two Governments in deciding to present the claim or on the action of the claimant Government in continuing to press it.

By the Convention, the flag of the ship determines whether a claim may be made. The vessels that may without objection be boarded and that may make claims for compensation are "private vessels under the British flag" (Article 2) and "British vessels" (Article 4). The status of the ship depends on the governing law; in this case, on The Merchant Shipping Act, 1894. The material provisions of that Act will be found in Appendix E. That Act determines what vessels are to be regarded as British vessels and, therefore, entitled to make claims for compensation which may be referred to Commissioners under Article 4. The Commissioners deal with the claim referred but not with the status of the ship. If it is not a "private vessel under the British flag" or a "British vessel," so as to come under the second and fourth articles, the claim is not referred and Commissioners are not appointed to consider it.

It is true that the Commissioners, if they agree, are to make "recommendations" in a joint report and it may be suggested that recommendations differ from decisions. The Canadian Government is not concerned at the moment to discuss to what extent this may be true as to matters arising in connection with the claim itself. It must be remembered that the Convention expressly provides that effect is to be given to the recommendations made but this provision would cover only such recommendations as relate to matters strictly within the jurisdiction of the Commissioners, that is to say, the validity of the claim having regard to the defences raised.

A recommendation that the claim should not be pressed would be entirely outside the scope of the reference. It would deal with a matter not referred, namely the conduct of one of the High Contracting Parties in pressing the claim rather than the merits of the claim itself. The basis of any claim presented must be that there has been improper or unreasonable exercise by the United States of the rights conferred by Article 2 or a failure on its part to give a British vessel the benefit of Article 3. No distinction is drawn by the Treaty nor is any permissible

between one British ship and another because of the nationality of those who may be beneficially interested in it.

The Treaty by its terms contemplates and makes express provision for instances of British ships, while outside the limits of the territorial waters of the United States, endeavouring to import alcoholic beverages into the United States and certain rights are conferred exercisable only within defined limits. It was common knowledge when the Treaty was made that citizens of the United States might be interested to some extent in the operations of the vessels carrying alcoholic beverages, yet there is nothing in the Treaty differentiating the rights of the vessel in such case from those where citizens of the United States were not interested. The Convention itself treats every claim as a "claim by a British vessel for compensation." It does not treat it as one made on behalf of individuals interested in the vessel.

The Convention recites the desire of His Britannic Majesty and the President of the United States to avoid any difficulties that might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages. It would require plain and clear language to authorize the Commissioners to control the exercise of discretion vested in His Majesty as to whether a claim that has been referred should be pressed.

The Merchant Shipping Act of 1894 recognizes no right on the part of an alien to own a British ship and if the ship is owned by a company it is a matter of no importance whether an alien owns shares in the company. The "persons qualified" to be owners of a British ship are described in Section 1 of the Act. Owners and transferees must show that they are qualified before being entered on the register (Secs. 9; 25). An interest transmitted to an unqualified person may be sold for his benefit (Sec. 28), but, otherwise, any interest either legal or beneficial that an unqualified person may acquire in a ship using a British flag and assuming the British character is subject to forfeiture under the Act. That is the effect of Section 71 of the Act, which reads:—

"71. If an unqualified person acquires as owner, otherwise than by such transmission as hereinbefore provided for, any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, that interest shall be subject to forfeiture under this Act."

The right of forfeiture given by this Section is not surrendered by any term of the Convention. The right to forfeit is an attribute of sovereignty, the exercise of which is not in any way subjected to the control of the United States or of Commissioners acting under the Convention.

An affirmative answer to the first question involves the proposition that the authorities of the United States would be at liberty to exercise the treaty rights in an improper or unreasonable manner provided the ultimate or beneficial interest was wholly vested in citizens of the United States, notwithstanding the vessel properly bore the British flag. It would also follow that as to any claim made under the Treaty a prolonged search and inquiry should be made as to the "beneficial or ultimate" ownership and further that an investigation should be made into claims of creditors to determine their rights or equities unless such rights and equities are to be entirely disregarded. It is confidently submitted that the Convention does not by its terms contemplate any such collateral inquiry or any such interference with the discretion exercisable by His Britannic Majesty in respect of British ships and the rights that accrue to them under the Treaty. The high functions exercisable by the Commissioners should be limited to making recommendations as to the merits of the claim, having regard to the rights conferred on the United States and the restrictions imposed in respect of the exercise of such rights. No doubt the Commissioners have broad powers but their jurisdiction is limited to making such recommendations as will immediately or ultimately bring about a decision on the merits of the claim referred.

## THE SECOND QUESTION

This question is stated as follows:—

The second question relates to the right of hot pursuit. Further, it has two aspects, and it is based upon the assumption that the averments in the Answer with regard to the location and speed of the '*I'm Alone*' are true. The question in its first aspect is whether the Government of the United States under the Convention has the right of hot pursuit where the offending vessel is within an hour's sailing distance of the shore at the commencement of the pursuit and beyond that distance at its termination. The question

in its second aspect is whether the Government of the United States has the right of hot pursuit of a vessel when the pursuit commenced within the distance of twelve miles established by the revenue laws of the United States and was terminated on the high seas beyond that distance.

This question raises a point of law but no question of fact, the assumption being that hot pursuit commenced outside territorial waters but within an hour's sailing of the coast and that it terminated beyond that distance. No question arises as to what constitutes hot pursuit, it being assumed as a fact that there was hot pursuit from the point of commencement to the point of termination. The pursuit from beginning to end was, therefore, on the High Seas which are open to all nations and subject to no territorial jurisdiction. By the treaty the limit of territorial waters is definitely fixed at three miles from the coast.

No nation has under international law in time of peace authority to detain, board and search ships outside territorial waters, except on suspicion of piracy. If a maritime nation takes steps outside its territorial waters to prevent an intended violation of its laws, it does so relying upon the non-interference of the nation to which the vessel belongs. But there is no rule of international law conferring the right and the nation so interfering takes the risk of paying damages for the detention. A nation whose vessel is detained might raise no objection, but it could do so at any time, in the absence of a convention or treaty binding it to non-interference. This has been the attitude of Great Britain to the knowledge of the United States. It was fully stated by Great Britain in the Fur Seal Arbitration where supporting authorities were referred to and discussed.

The Convention of 1924 recognizes the position to be as above described, and it proceeds to bind His Majesty to non-interference. The High Contracting Parties by Article 1 declare that it is their firm intention to uphold the principle that three marine miles extending from the coast line outwards and measured from low water mark constitute the proper limits of territorial waters. This declaration is intended to establish beyond question the fact that the area within which United States laws may operate is limited to three miles from the coast. Outside that limit a nation may only legislate so as to bind its own citizens. Article 2 confers rights on the authorities acting for the



United States. All these rights are in relation to one class of traffic, the importation of alcoholic beverages into the United States. They are all to be exercised within what may be described as the Treaty waters, that is outside the limits of territorial waters and within the distance that can be traversed in one hour by the suspected or the assisting vessel. The right of hot pursuit is not expressly conferred and, it is submitted, is not to be implied.

The word "right" is to be given a broad meaning. As first used in Article 2 it involves merely freedom from interference by His Majesty in case a British vessel is boarded. The thing to be done in order to bring this right into operation is to board the vessel and obviously the freedom can only arise if the boarding takes place within Treaty waters. Boarding is the thing done that brings in its train the other rights of enquiry, examination, seizure and taking into port. These all lead up to the final right of the United States to make an adjudication in accordance with its laws. It is unnecessary to consider what the position would be if, after boarding, the vessel passed outside Treaty waters before some or all of the additional rights were exercised because the *I'm Alone* was not boarded within Treaty waters. Hailing the vessel or commanding it to stop to be boarded is not enough. All this is made abundantly clear by the express language of Clause (3) of Article 2. It does not take the form of providing that the rights conferred may be exercised within Treaty waters. It is in a prohibitive form. It stipulates that the right conferred "shall not be exercised" outside the prescribed area. The purpose of the clause is plain. There being no international rule giving to a maritime nation the right to board alien vessels on the High Seas, and, it being intended to permit boarding without interference, it was necessary to prescribe the limits within which boarding might take place without objection thereto.

In so far as the right of hot pursuit is recognized by international law, it is confined to hot pursuit from territorial waters and has not been extended to pursuit from jurisdictional or Treaty waters unless expressly provided in the Treaty. Not only must the pursuit start within territorial waters, but the vessel must have committed an offence within such waters.

The present convention, it is understood, is the earliest of a series of conventions providing for seizures on the high seas and, accordingly, claims by states of the existence of such a right

are necessarily of recent origin, and there can not possibly have been the international acquiescence that is essential to the creation of a new rule of international law. In the absence of general international acquiescence, which might be regarded as the foundation of a new rule of customary law, specific acquiescence by the Canadian Government would be necessary, and there can be no suggestion of any consent, either expressed or implied by the Canadian Government, to the assertion of this doctrine.

The lack of recognition of the existence of a right of hot pursuit from treaty waters is indicated by the Helsingfors Convention, signed the 19th August, 1925, to which eleven Baltic states were parties. It was provided by Article 9:—

“The Contracting Parties undertake to raise no objection to the application by any of them of its laws, within a zone extending to twelve nautical miles from the coast or from the exterior limit of the archipelagoes, to vessels which are obviously engaged in contraband traffic.

“If a vessel suspected of engaging in contraband traffic is discovered in the enlarged zone hereinbefore described, and escapes out of this zone, the authorities of the country exercising control over the zone in question may pursue the vessel beyond such zone into the open sea and exercise the same rights in respect of it as if it had been seized within the zone.

“These stipulations are adopted without prejudice to the attitude taken by each of the Contracting Parties with regard to the legal principles governing territorial and Customs zones.”

The express provision of a right of pursuit from treaty waters indicates that the right of pursuit from treaty waters was not regarded by the States concerned as a recognized doctrine. If the right of hot pursuit from treaty waters had been recognized by international law it would not have been necessary expressly to provide for it in the Convention.

Accordingly, it appears that at international law the right of hot pursuit is confined to pursuit from territorial waters and is essentially attached to the territorial right. The action of the High Contracting Parties, in expressly confirming the three-mile limit by Article 1 of the Convention, must be taken as the confirmation of all of the rights incidental to territorial waters, as recognized by international law, together with the existing

limitations upon those rights. It strengthens the view that any right of hot pursuit must commence in territorial waters.

Dealing more particularly with the alleged right of hot pursuit under the revenue laws of the United States, it may be observed that, unless such a right has been recognized by international law, it cannot be a matter of which the Commissioners may take cognizance.

The United States in the Answer attempts to justify the action of the Coast Guard by asserting the doctrine that a littoral state is entitled to exercise a protective jurisdiction over foreign vessels, particularly in respect to fiscal and revenue matters within a zone beyond the marginal belt. The extent of the zone claimed is co-terminous with the ambit of the Tariff Acts, and it is contended that it includes jurisdictional rights within a twelve-mile belt, enlarged by the doctrine of hot pursuit.

This doctrine is a serious limitation upon the principle of the freedom of the seas, and it is submitted that it could not be accepted by the Commissioners, or by any other international tribunal, unless supported by the authority of treaty stipulations, or by international acquiescence. Such acquiescence can only be shown by evidence of seizures of foreign vessels under such a doctrine acquiesced in by the interested Governments, and extending over a long period of time. The mere assertion of the right by one or more countries without consequential seizures and acquiescence, is not a sufficient basis for such a doctrine.

This whole question was considered at the Conference on the Codification of International Law held at the Hague, March 12th-April 13th, 1930, and the exercise of such a jurisdiction by agreement with foreign states, was fully discussed. The answers by the Governments to the questionnaire and the position taken by the various representatives at the Conference showed clearly that there was not the general recognition and acceptance of such jurisdiction apart from agreements that are essential to the formation of a new doctrine of international law.

This position is strengthened by the making of the 1924 Convention. The occasion for the negotiation of this Convention was the adoption by the United States of a new policy with regard to liquor, which would necessarily involve serious con-



flicts with the Coast Guard. Coast Guard officers, acting under the authority of the municipal legislation of the United States, were asserting rights in respect to British vessels outside of territorial waters. The British Government was vigorously protesting against such action and asserting the principle of the freedom of the seas, with the consequential immunity of British vessels, so long as they were beyond the three-mile limit. When the Convention was concluded, a twelve-mile limit was not adopted, but an hour's sailing distance was established as the outside limit for boarding vessels. There can be no doubt that the High Contracting Parties in concluding the Treaty intended to establish, in a formal manner, all the rights that might thereafter be exercised by the United States in respect to British ships engaged in the traffic referred to in the treaty. In the circumstances, in agreeing to the Convention, the United States must be taken to have abandoned any other claims it may theretofore have asserted. The correspondence leading up to the Convention will be found in Appendix F.

The question is not controlled by the language of the Revenue Laws of the United States or by the decisions of any of the United States Courts. The Commissioners should not be affected by any considerations as to the extent to which the Courts and the Coast Guard officers of the United States consider themselves bound by their municipal statute law. British ships are not by the treaty subjected to the laws of the United States until all the rights conferred on the United States by the Treaty have been exercised and the vessel brought before the Courts for adjudication. The statutes of the United States are not to be considered as determining whether a vessel can be brought into port. The question submitted raises a broader interest, and one to be determined on principles of international law, having regard to the provisions of the Convention of 1924. It has been pointed out that seizures on the high seas within the twelve-mile zone cannot be justified by international law and, *a fortiori*, seizures beyond such zone, after hot pursuit, cannot be so justified. Indeed, even if the assertion of a right to exercise jurisdiction within the twelve-mile zone could be justified by international acquiescence and usage, it does not follow that the right of hot pursuit can be added. The first instances of the assertion of a right of hot pursuit from the twelve-mile zone, established by the revenue laws of the United States, are all



subsequent to the date of the Convention. They have not been acquiesced in by the interested Governments. This suggestion of a right of hot pursuit from jurisdictional waters is of such recent origin, that there has not been and could not be such international acquiescence as is essential to create the right.

Canada submits that this question, in both its aspects, should be answered in the negative.

### THE THIRD QUESTION

This question is raised by paragraph 3 (*d*) of the Directions:—

The third question is based upon the assumption that the United States Government had the right of hot pursuit in the circumstances and was entitled to exercise the rights under Article 2 of the Convention at the time when the *Dexter* joined the *Wolcott* in the pursuit of the *I'm Alone*. It is also based upon the assumption that the averments set forth in paragraph 8 of the Answer are true. The question is whether, in the circumstances, the Government of the United States was legally justified in sinking the *I'm Alone*.

The discussion of this question depends on the assumption that, at the time of the sinking, the United States was entitled to exercise treaty rights far beyond an hour's sailing. It is based on the assumption that the right of hot pursuit existed, and that the views of the United States as to the speed and location of the vessel are right. It is also based on the assumption that the statement of facts set forth in paragraph 8 of the Answer, are true.

These assumptions are made for the purpose of considering the specific legal issue, namely, whether the United States, under the Convention, had a right to sink the *I'm Alone*. It is common ground that the sinking was deliberate and intentional.

It is submitted, on behalf of Canada, that the deliberate and intentional sinking of a British vessel can, under no circumstances, be justified by the Convention and that, accordingly, the sinking in this case must be regarded as an improper and unreasonable exercise of the rights conferred by Article 2 of the Convention and, accordingly, as affording a right to compensation under Article 4.

The Convention itself makes no reference to the amount of force that may be used. It is assumed, for the purpose of this argument, that it authorizes the use of such force as is reasonably necessary to enable the rights conferred to be secured and leads to the ultimate object of bringing the vessel into port if the circumstances justify that being done. There is, however, nothing in the Convention that would seem, even by implication, to justify the extreme measures that were adopted.

Indeed, the sinking of the vessel is absolutely inconsistent with the Convention itself. The *Dexter* having failed to stop the *I'm Alone*, sank her to save further trouble. The result of this action was completely to frustrate the whole object to be attained by the treaty. The object of boarding, as set forth in Article 2, was to address enquiries to those on board and to examine the ship's papers, with consequential search and seizure. The sinking involved entire abandonment of any attempt to exercise the treaty rights, and such action cannot possibly be justified by anything in the Convention either by its express terms or by implication.

Accordingly, it is submitted that the Commissioners should reach the conclusion that, irrespective of other considerations, the sinking of the *I'm Alone* was an improper and unreasonable exercise of the treaty right and therefore an illegal and unjustifiable act in respect to which compensation is payable under the provisions of Article 4.

Dated the 28th December, 1932.

J. E. READ,  
*Canadian Agent.*

W. N. TILLEY,  
AIMÉ GEOFFRION  
*of Counsel for His Majesty's Government in Canada.*



## APPENDIX A

### Correspondence on *I'm Alone* Incident

1. From the United States Secretary of State to Canadian Minister at Washington, 28th March, 1929. (p. 21)
  2. From the Canadian Minister to the United States Secretary of State, 9th April, 1929. (p. 23)
  3. From the United States Secretary of State to the Canadian Minister, 17th April, 1929. (p. 32)
  4. From the Canadian Minister to the United States Secretary of State, 24th April, 1929. (p. 44)
- 

March 28, 1929.

The Hon. VINCENT MASSEY,  
Minister of the Dominion of Canada.

SIR,—I have the honour to refer to your visit to the Department on March 26, 1929, when you requested that you be furnished with a statement of the facts concerning the sinking of the vessel *I'm Alone* by the United States Coast Guard on March 22 last.

According to information furnished by the appropriate authorities of this Government, the *I'm Alone* was a notorious smuggling vessel, having been engaged in smuggling liquor into the United States for several years. It is stated that until the latter part of 1928, the *I'm Alone* operated on the New England Coast and had caused the Coast Guard forces a great deal of trouble. During the latter part of 1928, the *I'm Alone* changed its base of operations to Belize, British Honduras.

On February 2, 1929, the *I'm Alone* cleared from Belize for Nassau with a cargo of liquor, and six days later the vessel was sighted by the United States Coast Guard off the coast of Louisiana. The *I'm Alone* returned to Belize on March 6, 1929, in ballast without having proceeded to the destination for which it cleared on February 2. On March 12, 1929, the *I'm Alone* again cleared from Belize with a cargo of liquor, this time for Hamilton, Bermuda.

On March 20, 1929, the *I'm Alone* was sighted by the United States Coast Guard vessel *Wolcott* northwest of Trinity shoal, within approximately ten and one half miles of the Coast of



the United States. The *Wolcott* ordered the *I'm Alone* to heave to for boarding and examination, but this order was ignored, whereupon the *Wolcott* fired a warning shot across the bow of the *I'm Alone* and repeated its command for the vessel to heave to. When the second command was not complied with, the *Wolcott* fired through the sails and rigging of the vessel. The *I'm Alone* was proceeding seaward and the *Wolcott* took up the chase. The *Wolcott's* gun jammed and it could not therefore stop the *I'm Alone* but it kept in close chase and reported the incident to the Commanding Officer of the Coast Guard Base at Pascagoula, Mississippi, who dispatched the vessels *Dexter* and *Dallas* to assist the *Wolcott*.

The *Wolcott* continued the pursuit of the *I'm Alone* and, according to statements of the appropriate authorities, was at all times within sight of it. The Coast Guard vessel *Dexter* overhauled the *Wolcott* close up with the *I'm Alone* about eight a.m. on March 22 with the latter vessel heading toward Yucatan. The Commander of the *Dexter* ordered the *I'm Alone* to heave to but the master of the latter vessel refused saying that he would be sunk rather than stop. The commanding officer of the *Dexter* then spoke to the master of the *I'm Alone* through a megaphone and informed him that the *I'm Alone* would be sunk unless it obeyed the command to stop. Warning shots were fired ahead, and, when the vessel did not stop, the *Dexter* fired through the rigging and later put about a dozen shots into the hull of the *I'm Alone*. It is stated that the sea was too rough to permit the *I'm Alone* to be boarded and seized by force and that furthermore the master of the *I'm Alone* waved a revolver in a threatening manner indicating that he would resist forcibly any attempt to board his vessel.

The *I'm Alone* sank at 9.05 a.m. on March 22, in latitude 25° 41' and longitude 90° 45'. The Coast Guard vessels picked up the members of the crew of the *I'm Alone* with the exception of one person who was drowned. When the body of this seaman was taken from the water, the members of the Coast Guard worked for more than two and one-half hours in an attempt to resuscitate him but without avail.

Accept, Sir, the renewed assurances of my highest consideration.

FOR THE SECRETARY OF STATE:

W. R. CASTLE, JR.

No. 52.

9th April, 1929.

The Hon. HENRY L. STIMSON,  
Secretary of State of the United States,  
Washington, D.C.

SIR,—I have the honour to acknowledge the receipt of Mr. Castle's note of March 28, 1929, in which he transmitted to me information furnished by the appropriate authorities of the Government of the United States concerning the sinking of the Canadian schooner *I'm Alone* by the United States Coast Guard on March 22. I did not fail to bring the contents of this note immediately to the notice of His Majesty's Government in Canada, and I have now been instructed by the Secretary of State for External Affairs to thank you for the promptness with which my request for information was complied with, and to direct your attention to certain aspects of the incident.

2. The schooner *I'm Alone*, which was registered at Lunenburg, Nova Scotia, had unquestionably been engaged for a number of years, under various owners, in endeavouring to smuggle liquor into the United States.

3. In the present instance, the schooner *I'm Alone* arrived off the Louisiana coast early on the 20th March, and anchored at a point which, according to the information furnished by Mr. Castle, was ten and a half miles from the shore, and according to the master was not less than fourteen and a half miles distant. On the approach of the United States Revenue Cutter *Wolcott*, the schooner hove up anchor and made off south by west. It is stated that half an hour later the cutter came up and ordered the *I'm Alone* to heave to for examination, and that her captain refused on the ground that he was not within United States jurisdiction. After firing some blank shots the *Wolcott* proceeded to a tanker steaming westward, and upon returning took up the pursuit. Following a fruitless colloquy on board the schooner between the captain of the *Wolcott* and the master of the schooner, pursuit continued; the cutter, after again demanding that the schooner should heave to, fired several shots through her sails and rigging. The pursuit was continued on the high seas for two days and two nights. On the morning of the 22nd, when the schooner was in latitude 25° 41' and longitude 90° 45', or over two hundred miles from the United States

coast, the cutter *Dexter* came up from another direction and signalled to the schooner to heave to or be fired upon. The captain is stated to have refused on the ground that the coast guard vessel had no jurisdiction on the high seas. Fire was then opened with a three inch gun and rifles, some sixty or seventy shells being stated to have struck the schooner, though no member of the crew appears to have been hit. At frequent intervals the schooner was summoned to heave to, but repeatedly refused. Finally the schooner was sunk and the crew plunged into the sea, which was now rough from a rising gale. All the members were picked up by the two cutters, but the boatswain, a French citizen from St. Pierre, had apparently died from drowning before being picked up and could not be resuscitated. The crew were conveyed to New Orleans, and placed under arrest.

4. The adoption by the United States of a policy of national prohibition of the importation, manufacture or sale of intoxicating liquors for beverage purposes, differing materially from the policies in regard to control of the liquor traffic which were in force in the majority of countries, inevitably foreshadowed international difficulties through the likelihood of smuggling operations on a large scale. Owing to its close proximity and extensive common borders, no country was likely to be more concerned than Canada or more conscious of the desirability of making certain that all possible neighbourly requirements should be fulfilled. The United States Government is familiar with the extent to which the Government of Canada has endeavoured to fulfil this neighbourly obligation. Under a convention signed on the 6th June, 1924, provision was made for the furnishing of information regarding clearances issued to vessels suspected of being engaged in an attempt to smuggle goods into the other country, and for the refusal of clearances to vessels obviously unfit to carry their cargoes to the destination named in the applications for clearance. The extension in 1927 of the requirement of a bond in double duties on the exportation of liquor from Canadian Customs warehouses, to cover cargoes of vessels coming into Canadian ports for provisions, shelter or repairs, made it difficult for vessels with liquor cargoes which might be intended for United States consumption to establish bases in Canadian ports, and very materially aided the United States authorities in preventing smuggling by sea in the North Atlantic. The adoption in 1928 of measures, to take full effect in 1930, to



prevent the storing of imported liquors, other than liquors imported by the provincial authorities, in Customs warehouses, particularly in Nova Scotia and British Columbia, from which re-export might be made after payment of duty, is leading to the elimination of another source of smuggling into the United States. Other measures have been adopted which have had similar results, and a conference has recently been held in Ottawa between United States and Canadian officials to consider the possibility of further action and proposals made for additional measures.

5. The most difficult problem, however, was that of the measures which could be taken to prevent smuggling along the coasts of the United States. It was apparent that difficulty would arise in controlling smuggling, particularly at the outset, if the preventive operations of the United States authorities were to be confined wholly to territorial waters. On the other hand, assent to the extension of such operations to foreign vessels on the high seas presented serious difficulty to other countries, in view of the vital importance of the long established rule of free passage on the high seas in time of peace. It was desirable that there should be an agreed and absolutely definite understanding as to how these conflicting interests could be reconciled.

6. The United States Government accordingly took the initiative in June, 1922, in proposing to His Majesty's Government in the United Kingdom the conclusion of a treaty authorizing the exercise of the right of search beyond the three-mile limit of territorial waters. Negotiations continued for over a year. In November, 1923, advantage was taken of the presence in London of representatives of the Canadian and other Dominion Governments at the Imperial Conference of that year to discuss the question fully. The Canadian representatives supported the view that, while affirming the principle of the three-mile limit, it was desirable to meet the United States request for an extension of the right of search beyond the three-mile limit for the purpose in question. A Convention to this end, approved by all His Majesty's Governments, was signed, and ratifications were exchanged, at Washington in 1924.

7. The Convention, it will be recalled, was stated to be concluded because the parties were desirous of avoiding any difficulties which might arise in connection with the laws in force in the United States on the subject of alcoholic beverages. The parties reaffirmed their intention to uphold the three-mile limit



of territorial waters. His Britannic Majesty agreed that he would raise no objection to the boarding of private vessels under the British flag outside territorial waters by United States authorities for enquiry and if appearances warranted, for search as to whether the vessel was endeavouring to smuggle liquor into the United States. If reasonable cause appeared for belief that the vessel had committed or was committing or was attempting to commit an offence against United States laws prohibiting the importation of alcoholic beverages, it might be seized and taken into a United States port. The rights so conferred were not to be exercised at a greater distance from the United States coast than could be traversed in one hour by the vessel suspected of endeavouring to commit the offence, or by any other vessel in which the liquor was intended to be conveyed to shore.

8. It was of the essence of the Convention that its provisions covered the whole field of extra-territorial seizures. The conclusion that seizures of British vessels outside territorial waters would not be warranted, except in accordance with the terms to be agreed upon, was clearly expressed in a note from the Secretary of State to the British Ambassador of the 19th July, 1923, as follows:

“It may confidently be asserted that there would be no disposition on the part of the American authorities, and the special agreement would not justify any attempt to seize a British vessel, save within the limits proposed, and when it was clear that the vessel concerned was directly involved in an attempt to introduce its illicit cargo into the territory of the United States.”

9. Animated, therefore, by a friendly desire not to hinder the Government of the United States in the enforcement of its laws, and anxious solely to uphold the exact performance of treaty obligations and the maintenance in full integrity of the rules which protect the freedom of traffic on the high seas, His Majesty's Government in Canada has given most careful consideration to the circumstances of the sinking of the *I'm Alone*, as set forth in Mr. Castle's note and in depositions made before His Majesty's Consul General in New Orleans by the Captain of the vessel and by members of his crew. The conclusion has been reluctantly reached that, on the evidence now available, the pursuit and sinking of the vessel appears not to have been authorized either by the terms of the Convention of January, 1924, or by the rules of international law.

10. It appears to be established that the vessel was at all times beyond the limit of an hour's sailing distance from the shore. To determine the validity, under the Convention of January, 1924, of any interference with the vessel when she was first sighted on March 20, by the United States Coast Guard vessel *Wolcott*, it is necessary to examine the evidence regarding both the speed and the exact position of the *I'm Alone*. The testimony of the Captain concerning the vessel's speed given before His Majesty's Consul General in New Orleans, is as follows:

Q. "What was the speed of your vessel just before you anchored?"

A. "Positively not more than  $6\frac{3}{4}$  knots" . . .

Q. "What is the longest run in 24 hours that the boat has ever done with engines running and sails set?"

A. "231 knots, with a moderate gale on the quarter, and then under conditions in which the vessel had to be in ballast. We did less with cargo" . . .

(After the Captain had described the beginning of the pursuit.)

Q. "Could you give me any estimate of your speed?"

A. "At that moment at the very outside we were making about  $6\frac{3}{4}$  knots, perhaps, it would be just about our best speed, as I knew that if I ran my port engine on full speed opened out that the old trouble would probably leave us in jeopardy."

(The Captain previously testified that he was at anchor when observed by the *Wolcott* in order to examine his port engine, in which a bottom-end cylinder bearing had burned out.)

The deposition of the mate of the *I'm Alone*, John Williams, contains the following evidence on the vessel's speed:—

Q. "What speed were you going then?" (i.e., when first hailed by the *Wolcott*).

A. "Roughly  $7\frac{1}{2}$  knots, sir."

Q. "Could you do 8?"

A. "No, sir, couldn't do eight knots with power. I had been looking after the log for 20,000 miles and the best we ever did with canvas and power and a gale was  $9\frac{1}{2}$  knots."

Q. "You have never known her to do better?"

A. "No, sir."

Q. "When she did that run were the engines in perfect condition?"

A. "Yes, sir. That was the first trip, we took her from Halifax to St. Pierre."

The deposition of the Chief Engineer includes the following testimony:—

Q. "What speed do you consider you could get out of the schooner with both engines well?"

A. "The condition in which the shape of the engines were we could not do better than  $7\frac{1}{2}$  knots, a little better with sails and a fair breeze. It was quite a good while since we were docked and the bottom was pretty dirty."

From the testimony it appears that the vessel's speed at the time her pursuit began, with one engine partially disabled, was not more than  $7\frac{1}{2}$  knots an hour, and that the best speed of which she was capable in the most favourable conditions was  $9\frac{1}{2}$  knots an hour. Since in the note from your Government it is stated that the vessel was "within approximately ten and one-half miles off the coast of the United States" when sighted by the *Wolcott*, it appears that, if that indeed were her position, she was then beyond an hour's sailing distance from the shore.

11. There are, however, reasons of considerable force for believing that the *I'm Alone* was in fact at a still greater distance from the shore than  $10\frac{1}{2}$  miles. The Captain, a navigator of long experience, has deposed that on the morning on which the pursuit began he had anchored in order to examine his defective engine, a purpose which provided no incentive to come close inshore. He plotted his course to his place of anchorage from a fixed point, the Trinity Shoal Light Buoy, which is some twenty-four miles from the shore, and his evidence of his course thence to his anchorage is as follows:—

"I was looking for an inconspicuous place to anchor to make examination of my engines. I ran on a course from that buoy west-north-west 5 miles and then north  $\frac{1}{2}$  west, which is true north another 5 miles, and allowing 2 knots of current with me to the north-west, I estimated my position, allowing for such current, to be  $14\frac{1}{2}$  to  $14\frac{3}{4}$  miles from the coast of the United States. I knew positively from the speed of my ship and from the log which I had been using for thousands of miles to be correct, that I could not be any nearer

in at that point after running such a short distance. I anchored there roughly, I do not know the exact time, I may be 10 or 15 minutes out, about 5 a.m. I had the intention of going out again shortly after if the weather was favourable and engines in good condition."

The Captain's statement of the distance run from the Trinity Shoal Light Buoy to his anchorage is supported by the mate's evidence as follows:—

Q. "Could you see the Trinity Shoal Light Buoy?"

A. "Yes, sir. We passed it."

Q. "How far do you think you were from the Buoy? When you anchored?"

A. "The Captain told me that when she ran 5 miles west-north-west to let him know, which I did, after that he changed the course to north and told me to let him know when she had ran 5 miles."

Q. "Did you then drop anchor?"

A. "He gave me orders to drop anchor. The engines had to be fixed."

This course of the vessel, making allowance for current as stated in the Captain's testimony, would place the position at which she anchored between  $14\frac{1}{2}$  and 15 miles from the shore.

12. In any case the pursuit lasted through two days and two nights, far beyond the starting point, and the sinking took place over two hundred miles southward in open sea. It has been intimated that pursuit and seizure on the high seas might be justified on the ground of hot and continuous pursuit. It is agreed that international law recognizes that pursuit begun within territorial waters may be continued on the high seas, if immediate and continuous. The validity of this doctrine has been fully recognized by Canadian courts. It does not, however, appear to apply to the present case. The pursuit did not begin within the territorial three-mile limit which is an essential factor. That the pursuit should be initiated within strictly territorial waters was clearly recognized by the Secretary of State in an address on January 23, 1924, shortly after the signature of the treaty:—

"It is quite apparent that this government is not in a position to maintain that its territorial waters extend beyond the three-mile limit, and in order to avoid liability to other gov-



ernments, it is important that in the enforcement of the laws of the United States this limit should be appropriately recognized. . . . It does not follow, however, that this government is entirely without power to protect itself from the abuses committed by hovering vessels. There may be such a direct connection between the operation of the vessel and the violation of the laws prescribed by the territorial sovereign as to justify seizure even outside the three-mile limit. This may be illustrated by the case of 'hot pursuit,' where the vessel has committed an offence against those laws and is caught while trying to escape. The practice which permits the following and seizure of a foreign vessel which puts to sea in order to avoid detention for violation of the laws of the State whose waters it has entered, is based on the principle of necessity for the effective administration of justice." (Foreign Affairs, Special Supplement to Vol. II, No. 2, pps. IV and V.)

It is further to be noted that the cutter which sank the schooner had not participated in the original pursuit, but had come up from an entirely different direction two days later. Under these circumstances, the most essential elements of justification under the doctrine of hot pursuit appear to be lacking.

13. It is desired, finally, to bring to your attention the exact language of section 2 of Article II of the Convention of January, 1924:—

"If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offence against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws."

The right of seizure conferred by this Article may be admitted to carry with it constructively the right to exercise the minimum amount of force necessary to effect seizure. Even within the treaty-limit, His Majesty's Government in Canada would be loath to admit that the phrase "the vessel may be seized and taken into a port of the United States" would warrant action so drastic as the destruction of a vessel; still less does authority appear to be conferred for the destruction of a vessel by shell-fire on the high seas, accompanied by loss of life, after a pursuit

lasting for two days. It further seems probable that the *Wolcott* could have boarded the *I'm Alone* without endangering either vessel soon after the *I'm Alone* was first sighted by the *Wolcott* on March 20th. The evidence of the Captain on this point is as follows:

Q. "Could she have boarded you at that time? Assuming that she could have run up alongside?"

A. "Yes, sir. He might possibly have done so had he tried".

Q. "Did he try?"

A. "No, sir".

The mate deposed on the point as follows:—

Q. "Could he have come alongside at that time had he wished?"

A. "Easy".

Q. "Did he?"

A. "No, sir".

It clearly appears furthermore that, when the United States Coast Guard vessel *Dexter* joined in the pursuit on March 22nd and commenced firing on the *I'm Alone*, it was with the deliberate intention of sinking the vessel and not merely of rendering her helpless, as might have been done, for example by crippling her rudder. The mate of the *I'm Alone* records in his deposition the following conversation with the Captain of the *Wolcott* after he had been rescued from the sea:

Q. "Did you speak to any of the crew of the *Wolcott*?"

A. "They were talking to us. The Captain said to me that it was too bad, he said he would not have done it. He said that he advised the Captain of the *Dexter* to wait for smoother weather and he would have gone up alongside and tried to put men on board and avoid bloodshed".

I may add that Captain Randell denies that he ever threatened to use force if an attempt were made to board his ship, or that he flourished a revolver at any time during the pursuit; his testimony is supported by the evidence of the mate and chief engineer. If, as is intimated, the sea was too rough for boarding, it was doubly unfortunate that the vessel was deliberately sunk and the crew plunged into the sea, in imminent peril of drowning, with the result, in fact, of the death of one member of the crew.

14. I have been instructed to state that His Majesty's Government in Canada remains fully convinced of the desirability of continued co-operation with the Government of the United States in dealing with the smuggling traffic under the Convention of January, 1924, and the other measures to which I have alluded; there is no desire to support in any way vessels engaged in this traffic against any measures adopted by the United States for the enforcement of its laws which in their international aspect have been the subject of agreement. It is believed, however, that the Government of the United States will agree that it is essential for the effective operation of the Convention of January 1924 and for the attainment of the definite and agreed procedure which was the object of the contracting parties, that the terms of the Convention should be strictly observed. His Majesty's Government in Canada trusts that the Government of the United States will further agree that the search and seizure of vessels beyond territorial waters should be exercised in accordance with the terms of the Convention, that pursuit should not be continued beyond an hour's sailing distance from the shore unless initiated within territorial waters, that the measures adopted for enforcing the rights conferred by the Convention should be confined to the reasonable minimum necessary for their enforcement, and that in the present instance the extreme course adopted constitutes just ground for such redress as is now possible.

I have the honour to be, with the highest consideration, sir,

Your most obedient, humble servant,

VINCENT MASSEY.

---

April 17, 1929.

The Hon. VINCENT MASSEY,  
Minister of the Dominion of Canada.

SIR,—I have the honour to acknowledge the receipt of your note No. 52, of April 9, 1929, concerning the sinking of the Canadian schooner *I'm Alone* by the United States Coast Guard on March 22, last.

Before proceeding to a discussion of this case, I should like to assure you that this Government is profoundly grateful to your Government for the measure of co-operation which it has

received from your officials in the matter of the prevention of smuggling into the United States. The Convention which was signed on June 6, 1924, to suppress smuggling has been helpful, and your officials have faithfully discharged their obligations under this Convention. Canada has, as pointed out in your note, enacted a number of laws the effect of which has been to render it more difficult for smugglers to use Canadian ports in their efforts illegally to introduce liquor into the United States. The Government of the United States is deeply grateful to your Government for this friendly interest and valuable co-operation which has thus been manifested.

With respect to the case of the *I'm Alone*, may I point out that I recognize fully the position of your Government in feeling the necessity of making representations even though these representations are made in the case of a vessel which has for several years openly violated the laws of the United States and even though the Captain of the vessel has boasted of this fact. There is not in the mind of this Government the slightest question as to the propriety of representations in this and similar cases. This Government recognizes that in cases of this nature the Canadian Government is interested primarily in the principles of international law involved, and it is also an established principle of law that every alleged offender has the right to the most competent advocate of his case.

It is the contention of this Government that the *I'm Alone* was sighted and commanded to heave to at a point not more than 10.8 miles from the coast of the United States; that this distance is less than the distance which could be traversed by the vessel in one hour; that the master of the *I'm Alone* refused to obey the repeated commands of the Coast Guard officers to heave to for boarding and examination; and that, under the doctrine of "Hot Pursuit", the Coast Guard vessels possessed authority to follow the *I'm Alone* beyond the distance of one hour's sailing stipulated in the Treaty between the United States and His Britannic Majesty of January 23, 1924, and to compel it to comply with the orders of the Coast Guard officers to stop.

A detailed report in regard to this incident has been received from the Secretary of the Treasury who, as you know, has jurisdiction over the Coast Guard. In preparing this report the Coast Guard officers received the co-operation of a Special Agent of the Customs Bureau. Moreover, an assistant to the Attorney General of the United States, who went to New Orleans for the



purpose, has carefully checked all of the information contained in this report.

According to this exhaustive report, the *I'm Alone* was first hailed and commanded to stop when at a distance of no more than 10.8 miles from the nearest land at 6.10 a.m. on March 20, 1929. The calculations of the commanding officer of the *Wolcott* have been carefully checked by expert navigating officers of the Coast Guard and have been found to be correct. I wish here to invite your especial attention to a circumstance wherein a wholly disinterested observer has furnished conclusive evidence which corroborates beyond question the testimony of the commanding officer of the *Wolcott* in his determination of the position of the *I'm Alone* at the time the chase began. The American tank steamer *Hadnot*, bound from Charleston to Galveston, had passed Trinity Shoals Gas and Whistling Buoy No. 4 close aboard about 8 a.m. that day. On sighting the *Hadnot* while the pursuit was in progress, the commanding officer of the *Wolcott*, with rare presence of mind, decided to check his own position with that of this intermediary vessel which he knew must have known its own position accurately because of its departure from this prominent and well known aid to navigation shortly before. At the time the *Hadnot* was spoken by the *Wolcott*, about 8.20 a.m., it was five miles to the westward of the buoy. This fact, together with the *Wolcott's* ship's log, has enabled the officers of the Coast Guard reviewing the case definitely to work back the navigation data of the *Wolcott* and to fix the position of the *I'm Alone*, at the beginning of the pursuit, with certainty. This computation results in an agreement with the statement of the commanding officer of the *Wolcott* that the *I'm Alone* was not at a greater distance than 10.8 miles from the shore line of the United States. The master of the *Hadnot* furnished an affidavit to the Headquarters of the Coast Guard recounting this occurrence. Impartial evidence such as this, corroborating as it does the precise, scientific calculations of the commanding officer of the *Wolcott*, cannot but negative the statement of his position given by the master of the *I'm Alone*.

It may be added that all of the data respecting the position of the *I'm Alone* at the time the pursuit began have been carefully checked by a captain in the Coast Guard, who is a graduate of the United States Naval Academy and who has had forty years of nautical experience. The calculations of the master of

the *I'm Alone* are not only based upon less scientific methods but are also unchecked and unsupported by other evidence.

With further relation to the distance of the *I'm Alone* from shore when first commanded to heave to, may I point out that the action of Captain Randell in refusing to comply with this order would seem to contradict his statement that he was beyond treaty limits. If, as Captain Randell alleges, he believed that his vessel was beyond one hour's sailing distance from shore when first hailed, he must have known that his vessel could not legally be seized by the Coast Guard vessel and that he had nothing whatever to fear in complying with the command to stop and be examined. Instead of complying with this order, Captain Randell saw fit to flee and thus to defy a Coast Guard vessel of the United States engaged in the lawful exercise of its police powers, and he later allowed his vessel to be shelled and sunk rather than stop. It would thus appear that by his very action in fleeing and thus placing in jeopardy the safety of his ship and the lives of his crew, Captain Randell admitted his own belief that his vessel was within Treaty limits and thus subject to seizure.

As regards the speed of the *I'm Alone*, I may say that according to my information, this vessel was originally built as a fishing craft similar in type to the so-called "Gloucester" fishing vessels. These vessels are designed to transport fish over long distances in as short a time as possible in order that the cargo may be delivered to market in good condition. It appears that the *I'm Alone* was equipped with two 100 h.p. engines, in addition to full sails. Mr. Edward C. Hobbs, engineer of the *I'm Alone*, testified under oath at New Orleans on March 24 that the speed of the *I'm Alone*, with the engines alone, was 8 to 8½ knots. It is well known that vessels of the type of the *I'm Alone* have frequently attained speeds of more than 14 knots. The *I'm Alone* was well known to officers of the Coast Guard. For a period of more than four years, it successfully eluded the patrol vessels of that Service chiefly because of its superior speed.

On March 27, 1929, Mr. Melville L. Matson, of the Coast Guard, testified that on the evening of November 30, 1928, while he was in command of the Coast Guard Cutter *Wolcott*, he pursued the *I'm Alone* off the coast of Louisiana and that the latter vessel, because of its superior speed, was able to escape. Mr. Matson testified that during this chase the *Wolcott's* speed was

10½ knots and that, since the *I'm Alone* outsailed his vessel, it is his opinion that the speed of the *I'm Alone* was not less than 12 knots.

According to the records of the Coast Guard, at 10 a.m. on July 6, 1926, the *I'm Alone* was being trailed by the Coast Guard vessel *Acushnet* off Newport, Rhode Island. It suddenly put on full speed (power and sail) and began to draw away from the *Acushnet*. The latter vessel put on full speed and made every possible effort to keep up with the *I'm Alone* but at 10.30 a.m. the latter had placed such a distance between itself and the *Acushnet* that further pursuit was fruitless. The *Acushnet* has steam engines designed to develop 1000 h.p. and, according to its log, developed during this chase a speed of 12.6 knots. The Coast Guard authorities, who have carefully checked the computations of the *Acushnet* with respect to its speed, estimate that on this occasion the maximum speed of the *I'm Alone* must have been not less than 14.1 knots.

At 7.35 p.m. October 13, 1926, the U.S.S. *Ossipee* was trailing the British schooner *I'm Alone* off the New England coast. The sea was smooth and the wind was south by east, force 5 Beaufort scale. The *I'm Alone* was heading approximately 80 degrees magnetic when it suddenly took full advantage of the prevailing wind and began to make full speed. The *Ossipee* is a high powered vessel and it was compelled to attain its maximum speed of 13.5 knots to keep the fleeing *I'm Alone* in sight. The commanding officer of the Coast Guard vessel, Commander Stanley B. Parker, reported at the time in his official cruise report that 13 knots would have been insufficient to keep the *I'm Alone* in sight and that the speed of 13.5 knots barely permitted him to regain his former position close astern of the schooner.

From the foregoing, it would seem to be established that the *I'm Alone* when first commanded to heave to was within one hour's sailing of the United States. When the master of the *I'm Alone* refused to obey the repeated commands to heave to, the *Wolcott*, after firing warning shots across the bow, fired through the sails and rigging of the schooner, the Commanding Officer of the *Wolcott* continuing his demand that the *I'm Alone* heave to. Since the master of the *I'm Alone* still refused to stop, it would have been difficult, and even dangerous, for an attempt to be made by the Coast Guard vessel forcibly to board it. In this regard, the following question was put to Captain Randell

on March 24, last, during the course of his examination by a Special Agent of the Customs Bureau at New Orleans:

“In view of the rate of speed at which you were travelling and the condition of the sea, could he have put a boarding party on board your boat without your slowing down?”

Captain Randell's answer was: “Positively no, sir. He would have jeopardized his ship and his men.” Captain Randell had previously testified that his vessel did not decrease its speed when ordered by the *Wolcott* to heave to, but that it continued on at the same speed at all times.

During the course of the same examination, the following question was propounded to Captain Randell:

“From the time the *Wolcott* first picked you up on the 20th, until your vessel was sunk, as stated on the 22nd, was she continuously in your sight?”

Captain Randell's answer, under oath, was “Yes.” From the foregoing and the other evidence in the case, there can be no question that the pursuit was immediately begun and was continuous.

The legal aspects of the case as raised in your note appear to be the following, namely:

(1) Whether the doctrine of hot pursuit is applicable to the case since,

- (a) the chase began not from territorial waters (i.e. the 3 mile limit) but from the treaty distance of one hour's sailing;
- (b) the arrest of the vessel was performed not by the original pursuing vessel, but by another which had been called for assistance.

(2) Whether the degree of force used in this case was warranted.

It is not understood that your Government questions the validity of the doctrine of hot pursuit as such, but merely its application in the instant case. It may, however, be of passing interest to note that in the case of the *North*, an American fishing vessel found violating the fishing laws of Canada within the 3 mile limit which was pursued beyond that limit and seized upon the high seas, the Supreme Court of Canada upheld the doctrine of hot pursuit. Discussing the doctrine the Court said *inter alia*:



" . . . . . This right has been repeatedly asserted by legislation relative to breaches of shipping laws, neutrality laws, and customs or revenue laws, as well as the case of fisheries. In each case the reasonable necessity seems to have been the basis for such legislation and the reason for its recognition in international law." (37 Canadian Supreme Court Reports, 385).

The question whether the doctrine of hot pursuit is applicable in cases where the chase began without the customary three-mile limit, but within the treaty distance of one hour's sailing, has been given consideration by the Federal courts of the United States, notably, in the cases of the *Pescawha*, the *Newton Bay* and the *Vinces*. In the last named case, it may be recalled that the British schooner *Vinces* was signalled to stop by a Coast Guard vessel seven and one-half miles from the shore. This she refused to do and she was chased to a distance of twelve and three-quarters miles from the shore. In the course of its opinion upholding the validity of the seizure of the vessel the Court expressed itself in part as follows:—

" . . . . . We think it is clear under the hot pursuit doctrine that if the right of seizure existed at the time the vessel was signalled the right was not lost because she had succeeded in getting further from port in her attempt to run away."

It may be added that in the two other cases cited above the Courts of the United States have upheld the validity of the seizure on the high seas of vessels suspected of violating the laws of the United States where such vessels had escaped, not from territorial waters of the United States (i.e. the 3 mile limit), but from the distance of one hour's sailing from the coast of the United States. While I am not unmindful that the decisions of municipal tribunals, however considered their opinion may be, cannot necessarily be regarded as laying down principles of international law binding on foreign states, they are entitled to respectful consideration. It may not be amiss in this respect to point out that the Courts of the United States have not hesitated to denounce executive officers of this Government where their activities, in the Court's estimation, have been in violation of municipal or international law. This occurred notably in the cases of the *Sagatied* and the *George and Earl*, where the Courts held the seizures illegal.

Moreover, may I be permitted to point out that no complaint has been made by His Majesty's Governments in Canada or Great Britain against the enforcement of the doctrine of hot

pursuit in the cases of the *Pescawha*, the *Newton Bay* and the *Vinces*, above referred to, which from the statement of the facts in these cases, appear to have been similar to that in the instant case with the possible exception of the amount of force used to bring the vessel to a stop.

In the estimation of this Government, the correct principle underlying the doctrine of hot pursuit is that if the arrest would have been valid when the vessel was first hailed, but was made impossible through the illegal action of the pursued vessel in failing to stop when ordered to do so, then hot pursuit is justified and the locus of the arrest and the distance of the pursuit are immaterial provided:

(1) that it is without the territorial waters of any other state;

(2) that the pursuit has been hot and continuous.

With regard to the duration of pursuit I may state that it is the view of this Government that this is unimportant provided the other elements of hot pursuit are always present. In this relation, may I cite the opinion of the British publicist, Piggott, in his work entitled "Nationality", volume II, pages 35-40, in which he holds that "*there appears to be no limit of space or time during which it may continue.*" On the same point Pitt Cobbett makes the following comment:—

"This is sometimes called the law of 'hot pursuit' because it is an essential condition of its validity that the pursuit should be started immediately, and that the arrest should be effected, if at all, in the course of the pursuit. *Subject to this, the pursuit may be continued indefinitely or until the vessel passes into the territorial waters of another State.*" (Leading Cases on International Law, 4th ed. Part I, p. 175).

The following quotation from Piggott is believed to be of interest in this relation:—

"The two familiar examples of the application of the principle are offences against the revenue laws, or against the fishery laws, *committed within the revenue or the fishery waters respectively.* In these cases there is authority both in practice and judicial opinion, that hot pursuit outside those areas on to the high sea would be justified and the seizure upheld as consistent with the law of nations." (Nationality, Vol. II, pp. 35-40.)

Article II of the Convention between the United States and His Britannic Majesty of January 23, 1924, recognizes the right

of the United States to seize a British vessel within one hour's sailing distance from the coast where there is reasonable cause to believe that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States. One of the purposes of Article II of the Convention just referred to was to extend in effect the distance from the coast of the United States within which the jurisdiction of this country might be exercised with respect to certain classes of British ships. Should the right of the United States authorities be denied to continue the pursuit of vessels on the high seas when they have been hailed within the treaty limit, it would seem that the advantages purported to be granted by the treaty are illusory, since it would always be open to offending vessels to refuse to stop when signalled, and flee to the high seas. While it is true that most publicists have predicted the right of "Hot Pursuit" upon an effort to arrest within territorial waters, may I point out that the rights conferred in the so-called liquor treaty between the United States and His Britannic Majesty are of a novel character and have extended the right of arrest to a greater distance than had heretofore been acknowledged under international law.

With regard to the fact that the arrest of the *I'm Alone* was performed not by the original pursuing vessel but by another which had been called for assistance, I desire to present the following considerations.

It would seem perfectly clear from the statement of the facts in this case that the *Wolcott* was in continuous pursuit of the *I'm Alone* and that it was present at all times until the latter was sunk by the *Dexter* which had been called for assistance in view of the fact that the *Wolcott* had jammed its gun. It should be understood that the *Dexter* and the *Wolcott* were operating conjointly as a unit of the same force and under one command. Discussing the limitations upon the doctrine of "Hot Pursuit," the British publicist Hall says:—

"The restriction of the permission within the bounds stated may readily be explained by the abuses which would spring from a right to waylay and bring in ships at a subsequent time, when the identity of the vessel or of the persons on board might be doubtful." (Hall, 7th ed., 266.)

It is perfectly clear, of course, that in this case there could have been no doubt of the identity of the vessel and that there was no question of waylaying and bringing in the *I'm Alone* "at a subsequent time."



It is submitted that so long as the *Wolcott* was present at all times and was actually co-operating with the *Dexter* in a joint endeavour to make the *I'm Alone* stop, the requirements of the doctrine of "Hot Pursuit" were met and the additional factor that the *Dexter* joined in the chase does not invalidate the legality of the action of the American authorities.

The only remaining question is whether the Coast Guard officials were justified in sinking the *I'm Alone*. The undisputed evidence is that the master of the *I'm Alone* refused to stop although repeatedly warned, and that there was no way of boarding it while in motion and that the Coast Guard officials had the choice of allowing it to escape or sinking it. A significant fact in the case is that the master of the *I'm Alone* preferred to be sunk rather than to be taken into court for adjudication by the courts of the United States where the nature of its activities, its distance from the coast, its speed and the other factors in the case would have been subject to impartial judicial examination.

The Captain of the *I'm Alone* could at any time have signalled his readiness to comply with the Coast Guard's request, thus putting an end to any danger either to his vessel or to himself and his crew. If the Captain of the *I'm Alone* considered that he was being illegally treated, his proper recourse would seem to have been to surrender under protest and to seek his remedy in the courts and through diplomatic channels.

The officers of the Coast Guard used the utmost discretion, and refrained from using force except as a last resort, and in firing on the *I'm Alone* used the greatest precaution to avoid any loss of life. The one member of the *I'm Alone* crew who died as a result of drowning was pulled out of the water by a member of the Coast Guard who jumped overboard for that purpose.

May I point out that should it become generally known that Coast Guard vessels would not enforce their orders to stop, offending vessels, when hailed within treaty distance, would probably always endeavour to escape and thus defeat the purpose for which the various liquor treaties to which the United States is a party were negotiated.

In this connection it may not be amiss to recall the case of the United States fishing vessel *Siloam* which on May 24, 1923, was found by the Canadian preventive vessel *Malaspina* in the vicinity of Solander Island off the coast of British Columbia. While there was some disagreement as to the actual facts in the



case, it is undeniable that an American fishing schooner was sunk and a member of its crew was killed by rifle fire from the Canadian preventive vessel while the Canadian vessel was trying to enforce its police powers. The British Embassy transmitted two notes to the Department reporting this incident and the Department acknowledged these notes without protest or comment. Regardless of where the pursuit of the *Siloam* began, it can scarcely be denied that the degree of force exercised by a preventive vessel of your Government in its effort to compel obedience to its authority in that case constitutes a striking parallel to that employed by the Coast Guard in endeavouring to force the *I'm Alone* to stop. It is presumed that the action of the commanding officer of the *Malaspina* was based on the provisions of Chapter 43, Section 7 (2) of the Revised Statutes of Canada which reads as follows:—

“On any such ship, vessel or boat, failing to bring to when required, being chased by any such Government vessel or cruiser having such pennant and ensign hoisted, the captain, master or other person in charge of such Government vessel or cruiser may, after first causing a gun to be fired as a signal, fire at or into such ship, vessel or boat.”

I need hardly state that the Government of the United States deplores the loss of the life of Mr. Leon Maingui, a member of the crew of the *I'm Alone*, by drowning. In connection with his death, however, it must be taken into account that, as already pointed out, the master of the *I'm Alone* had it within his power to remove at any time prior to the sinking of the vessel the danger in which the lives of the members of his crew were placed by complying with the order to stop. It must also be remembered that at least two members of the crew of the *I'm Alone*, Jens Jensen and Edouard Fouchard, testified under oath at New Orleans that the members of the crew of the *I'm Alone* implored the Captain to obey the command of the Coast Guard officers to stop. These same men testified that there were no life preservers on board the vessel.

With reference to the responsibility for the death of Mr. Maingui, Mr. Edouard Fouchard, a cousin of the deceased, was asked during his examination at New Orleans the following direct question:—

“Do you think that the Captain (of the *I'm Alone*) was the cause of your cousin's death?”

His answer, under oath, was as follows:—

“If there were life preservers on board and the Captain had surrendered like a sensible man, my cousin would never have died.”

Your note states that when the Coast Guard vessel *Dexter* joined in the pursuit and commenced firing on the *I'm Alone*, it was with the deliberate intention of sinking the vessel and not merely of rendering it helpless, as, you suggest, might have been done by crippling its rudder. In this regard, may I remind you that the commanding officer of the *Dexter*, as well as the master of the *Wolcott* repeatedly commanded the *I'm Alone* to stop and made every possible effort to force it to do so before sinking it. The Coast Guard authorities point out that perhaps the easiest way to stop an offending vessel in ordinary circumstances is to fire into its engine room and thus disable its engines. Unfortunately, the officers of the *Dexter* did not know the location of the *I'm Alone's* engines, and they feared that if they fired into the vessel with the view of disabling its engines, the shells might kill members of the crew.

It may be added that, according to a statement of the commanding officer of the *Dexter*, during the latter part of the chase, several members of the crew of the *I'm Alone* were observed aft on the schooner. There was a heavy sea and the vessels were rolling badly. The commanding officer of the *Dexter* feared that, if he tried, in such circumstances, to disable the schooner's rudder, a shell might strike it high and kill those members of the crew who were aft. It thus appeared to him that the safest course to pursue was to fire into the vessel below the water line and this was done. It is to be noted that no member of the crew was injured by gun fire, and, had there been life preservers on board, there is every reason to believe that the life of Mr. Leon Maingui would have been spared.

It is my earnest hope that the above statement may satisfy the Canadian Government that in the case of the *I'm Alone* the American authorities were justified by the facts in pursuit of the vessel on the high seas; that their sinking of the ship was, in the circumstances, inevitable and that they acted throughout in full accord with the law. I hope even more that this may prove to be true because I so thoroughly appreciate the very important assistance generously accorded by the Canadian Government in the prevention of the smuggling of intoxicating

liquors into the United States. I am sure you will realize that it is the aim of all branches of this Government in the enforcement of the Prohibition Law, as well as all other laws, to act themselves not only in a strictly legal manner but with due regard to the dictates of humanity.

If your Government, however, after a careful examination of this note, still finds itself unable to concur in the findings of facts and the conclusions of law set forth herein, the Government of the United States will gladly agree to submit the matter to arbitration as provided for in Article IV of the Convention between the United States and His Britannic Majesty of January 23, 1924.

Accept, Sir, the renewed assurances of my highest consideration.

HENRY L. STIMSON.

No. 67

24th April, 1929.

The Hon. HENRY L. STIMSON,  
Secretary of State of the United States,  
Washington, D.C.

SIR:

1. I have the honour to acknowledge the receipt of your note of the 17th of April, 1929, concerning the sinking of the Canadian schooner *I'm Alone* by the United States Coast Guard, and to state that I communicated it immediately to my government.

2. I have been instructed by the Secretary of State for External Affairs to inform you that His Majesty's Government in Canada have given careful consideration to the contents of the note. They desire to convey their appreciation of the expression of gratitude on the part of the Government of the United States for the friendly co-operation of Canada in the prevention of smuggling of alcoholic liquors into the United States. The Canadian Government appreciate also the full and reasoned statement which you have presented of the facts and the principles of international law bearing on the case, as they appear to the Government of the United States. They regret, however, their inability to concur in certain important aspects of this presentation.

3. Upon the question of fact as to the position of the schooner when commanded by the revenue cutter *Wolcott* to

heave to for examination, and as to the speed of the vessel, there is marked discrepancy between the evidence of the Coast Guard officers and the evidence of the captain and members of the crew of the schooner. These discrepancies appear capable of solution only by an examination of all the evidence by an impartial tribunal, and it is therefore considered unnecessary to repeat the statements cited in my previous note, or to review the contrary evidence which has been furnished you through the Secretary of the Treasury.

4. It appears desirable, however, to advert briefly to a point brought forward in your note as proving that the position in question was within the hour's sailing distance from shore within which the Convention of 1924 accords the right of search and seizure. The view is advanced that Captain Randell's refusal to heave to when first commanded may be taken as evidence that he knew that he was within an hour's sailing distance from shore, as he must have been aware that otherwise his vessel could not legally be seized and that he would have nothing to fear in complying with a command to stop and be examined. It is surely the contrary deduction that is to be drawn. Such a contention might be taken to lead to the conclusion that the further a vessel was out on the high seas and the less ground there was for an order to halt, the more readily should the order be obeyed. If the schooner was outside the treaty limits, an order to halt was without legal force. There had been a number of previous cases where vessels which had been seized were later found by the courts to have been outside the treaty limit, but where heavy loss followed the long delays involved in the court proceedings; in a number of cases claims have been advanced for compensation on such grounds.

5. Even, however, were it not established that the *I'm Alone* was beyond the treaty limits when ordered to stop, the Government of Canada cannot agree that any adequate ground has been established for pursuit on the high seas. They have previously indicated their view that the doctrine of hot pursuit which has been advanced is not applicable to a pursuit which, as is agreed to have been the case in the present instance, did not begin in territorial waters. The doctrine is adequately summarized by the latest and most authoritative United States expositor, as follows:—



"The case (of hot pursuit) is one where a vessel has committed an offence against the territorial laws within the three mile limit. The agents of the local sovereign attempt to arrest the offender which endeavours to escape. If the pursuit is not brought to a successful end before the ship leaves territorial waters, the pursuit may be continuously pursued upon the high seas." (Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, New York, 1927, p. 106).

The doctrine in any form has not found complete acceptance. Under the arbitral award of M. Asser, it was held that capture of the United States sealers *James Hamilton Lewis* and *C. H. White* on the high seas could not be justified on the ground of pursuit from territorial waters (1902 *Foreign Relations of the United States*, App. 1, pp. 454-462). Where recognized, it is under the distinct limitation that the pursuit must be initiated within territorial waters. This limitation was clearly accepted by the Secretary of State of the United States in the address given shortly after the signature of the 1924 Convention, to which reference was made in my previous note. In his work, *International Law, chiefly as interpreted and applied by the United States*, (Vol. I, p. 240), Mr. Charles Cheney Hyde, after stating that "when a foreign vessel, after having violated the municipal laws of a State, within its territorial waters, puts to sea to avoid detention, conditions justifying immediate pursuit and capture on the high seas, on grounds of self defence, are rarely if ever present," supports on the ground of effective administration of justice, pursuit and capture, "if the pursuit be commenced before the ship has actually escaped from the territorial waters." Article VIII of the Rules on the Definition and Regime of the Territorial Sea, adopted by the Institute of International Law in 1894, confined the right to "a pursuit commenced in the territorial sea." In the statement made in the Fur Seal Arbitration by Sir Charles Russell, which is usually relied upon as expressing the acquiescence of Great Britain in the doctrine, there is a significant qualification: "It must be a hot pursuit, it must be immediate, and it must be within limits of moderation." In the case of the *North*, in the Canadian courts, which has been cited, pursuit began from territorial waters.

6. The contrary findings of United States courts in the *Vinces*, *Pescawha* and *Newton Bay* cases have not, as you have

fully recognized, international validity, nor have they been accepted by either the British or the Canadian Government. With regard to the *Vinces*, His Majesty's Ambassador in Washington communicated with the Secretary of State, asking for information regarding the attitude of the United States Government, and declaring that though not desiring to make any representations, His Majesty's Government did not wish it to be thought that they accepted all the principles upon which the decision of the District Court had been based, and fully reserved their rights. As to the *Newton Bay*, which is still before the courts, and the *Pescawha*, the question of representations has been under discussion between this Legation and the Government of Canada. During the recent Conference on Commercial Smuggling in Ottawa, reference was made by the Canadian representatives to the tendency of the United States enforcing authorities to go beyond the letter and spirit of the Convention of January, 1924.

7. In support of the extended interpretation of the doctrine of hot pursuit, you have pointed out that the rights conferred by the Convention of 1924 are of a novel character and may therefore be taken as extending the right of arrest to a greater distance than had heretofore been acknowledged under international law; and state that one of the purposes of the Convention was to extend in effect the distance from the coast within which the jurisdiction of the United States might be exercised with respect to certain classes of British ships. The Government of Canada are unable to accept this view. The first article of the Convention expressed the firm intention of the high contracting parties to uphold the principle that the three-mile zone constituted the proper limit of territorial waters. The provisions as to search and seizure beyond the three-mile limit were explicit exceptions to that recognized principle. They did not extend the territorial limits of the United States nor confer any general jurisdiction. The very fact that the rights conferred were of a novel character appears to be a conclusive reason against still further extension by any forced construction. It is submitted that if any such extension had been contemplated it would have been effected by explicit agreement, as was done in the Treaty of Helsingfors of the 19th August, 1925, between the Baltic States. This treaty, it will be recalled, provided for the mutual exercise of the right of search within a twelve-mile

zone. It was clearly recognized, however, that such a provision did not involve extension of the doctrine of hot pursuit to cover pursuit originating within this enlarged zone. It was found necessary, in order to secure such a right, to provide explicitly in this treaty, "without prejudice to the attitude taken by each of the contracting parties with regard to the legal principle governing territorial and customs zones," that "if a vessel suspected of engaging in contraband traffic is discovered in the enlarged zone hereinbefore described, and escapes out of this zone, the authorities of the country exercising control over the zone in question may pursue the vessel beyond such zone into the open sea and exercise the same rights in respect of it as if it had been seized within the zone.

8. Nor are the Government of Canada able to recognize the force of the view that such an extension is to be implied, because otherwise the advantages granted by the convention would be illusory. According to recent statements of the head of the Coast Guard Service, "the problem of Rum Row has been practically solved," and "smuggling from the high seas is now only about one-eighth of what it was a few years ago." Yet out of the scores of seizures effected, it is believed that only in four have the Coast Guard authorities themselves considered recourse necessary to the extended version of the practice. Even if the treaty had failed to yield the results anticipated, that would hardly appear to warrant its indefinite extension.

9. The chief remaining question is whether the force used, which resulted in sinking the vessel, was warranted. The determination of the degree of compulsion rightly exercisable in pursuit is not without difficulty. The force used, it is submitted, should in any case be limited to the minimum necessary to effect seizure, and be designed to make seizure possible. There does not appear to be warrant for the adoption of measures regardless of the outcome and such as to defeat the possibility of seizure and the necessary subsequent adjudication. If it was not possible to cripple the schooner without sinking her, or to board her in the weather prevailing, it is considered that it would have been possible to continue pursuit further without reaching the territorial waters of another state, during which time the weather might have cleared and boarding been effected. According to the deposition of the mate of the *I'm Alone*, the captain of the *Wolcott* stated later that he had urged this course

on the captain of the *Dexter*, but his advice was disregarded. When all the circumstances are taken into account, including the persistent rifle fire and the putting of the crew in irons, the impression that is formed is of a distinctly punitive intent. The view that the responsibility for the sinking should be shifted to the captain of the schooner rests on two assumptions for which, as has been indicated above, there does not appear to be valid ground—that the schooner was within treaty limits when ordered to halt, and that pursuit beginning within the treaty limits but outside territorial waters would be justified. Whatever view may be taken of the course of the captain of the *I'm Alone*, it would hardly appear possible to absolve from responsibility the captain and crew of the revenue cutter, who two hundred miles from the United States coast riddled the schooner with shells and plunged its crew into a rough sea, and to transfer the responsibility for the loss of life to the captain of the schooner for failing to provide lifebelts for such a contingency.

10. The case of the United States fishing vessel *Siloam* is cited as a parallel. Without taking the ground that the procedure of the Canadian preventive vessel *Malaspina* on that occasion was absolutely without fault, it may be observed that the two cases appear to present essential differences. The *Siloam* was found and pursued within Canadian territorial waters. Upon repeated refusals to heave to, and after threatening action on the part of the *Siloam's* captain, the *Malaspina* fired shells around the vessel. Later, rifles were used with the object of disabling the steering gear, and one shot unfortunately killed a sailor on the *Siloam*. The vessel, however, was not sunk by shell fire, but apparently was scuttled by her crew.

11. I regret, therefore, to find that the Government of the United States and the Government of Canada have not been able to reach similar conclusions as to the facts in the present case and as to the applicable principles of law. Both Governments have an interest in the full and strict observance of international agreements, and it is desirable that a definite agreement be reached as to the interpretation of the treaty provisions which is to be accepted. The Convention itself provides a means for determining whether in any case the enforcing authorities have proceeded within the rights conferred under Article 2. I am therefore instructed to say that His Majesty's



Government in Canada have much pleasure in accepting the proposal of the United States to submit the matter to arbitration as provided for in Article IV of the Convention between His Britannic Majesty and the President of the United States of America of the 23rd January, 1924. I shall be prepared to discuss with you at your convenience the procedure to be adopted to this end.

I have the honour to be, with the highest consideration, sir,

Your most obedient, humble servant,

VINCENT MASSEY.

## APPENDIX B

### Memorandum Outlining the Course Which Should be Followed in Referring the Claim of the *I'm Alone* to the Commissioners Under the Provisions of Article IV of the Convention Signed at Washington the 23rd January, 1924.

1. The claim arises, under the Convention signed at Washington the 23rd January, 1924, by reason of the sinking of the schooner *I'm Alone* on the 22nd March, 1929.

2. Article IV of the Convention provides for reference of claims by British vessels. It reads as follows:—

“Any claim by a British vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by article 2 of this Treaty or on the ground that it has not been given the benefit of article 3 shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the High Contracting Parties.

“Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Claims Commission established under the provisions of the Agreement for the settlement of Outstanding Pecuniary Claims signed at Washington the 18th August, 1910, but the claim shall not, before submission to the tribunal, require to be included in a schedule of claims confirmed in the manner therein provided.”

3. The claim of the *I'm Alone* has been referred to the Honourable Willis Van Devanter and the Right Honourable Lyman Poore Duff, who have been nominated under Article 4 by the High Contracting Parties.

4. It is desired by the two Governments that the claim should receive the joint consideration of the two Commissioners nominated in accordance with the terms of Article 4. To this end it is not desired that their consideration should be restricted. In order, however, to place the claim before the Commissioners

it is proposed that the following preliminary procedure should be adopted:—

*First.*—The Canadian Agent shall formulate the claim, outlining the substance of the Canadian contention and specifying the heads of claim. A copy of this claim shall be transmitted to the United States Agent and to each Commissioner.

*Second.*—The Agent for the United States shall then formulate the answer, outlining the substance of the United States contention as to liability, dealing separately with each head of claim. A copy of the answer shall be transmitted to the Canadian Agent and to each Commissioner.

*Third.*—Further statements by way of reply may be made if necessary.

*Fourth.*—The Agents shall thereupon request the Commissioners to meet together to consider the claim and answer, to give directions and to settle the further procedure to be adopted.

5. The object of this preliminary procedure is to make it possible to get the whole case before the Commissioners in outline, in order to elicit their views as to whether any further investigations are necessary and, if so, as to the manner in which they should be made and presented before them. It is anticipated that with a full appreciation of the points that are at issue in this claim, the Commissioners will be in a position to give directions as to further procedure.

September 22, 1930.

## APPENDIX C

### Claim Made by His Majesty's Government in Canada in Respect of the British Ship *I'm Alone* Under the Provisions of Article IV of the Convention Concluded January 23rd, 1924, between His Majesty and the United States of America.

1. The claim of the British ship *I'm Alone* advanced by His Majesty's Government in Canada arises out of the sinking of the *I'm Alone* on the high seas by the United States coast-guard vessel *Dexter* on March 22nd, 1929, in the vicinity of latitude 25° 41' and longitude 90° 45' or more than 200 miles from the United States coast.

2. The *I'm Alone* was an auxiliary schooner built and registered at Lunenburg, in the Province of Nova Scotia, and owned by the Eugene Creaser Shipping Company Limited, a company incorporated under the laws of the Province of Nova Scotia.

3. On March 12, 1929, the *I'm Alone* cleared from Belize with a cargo of liquor and arrived off the Louisiana coast early on the 20th March and anchored at a point 14½ miles or more from the shore. The speed of the *I'm Alone* under the circumstances then existing was not more than 7½ nautical miles per hour and under the most favourable circumstances not more than 9½ nautical miles per hour.

4. While the *I'm Alone* was at anchor, the United States coastguard cutter *Wolcott* approached and the *I'm Alone* hove anchor and proceeded south by west. About an hour later the *Wolcott* signalled the *I'm Alone* to heave to for examination and then came close and ordered the schooner to heave to, but the captain refused on the ground that he was not within the jurisdiction of the United States. When first signalled the *I'm Alone* had proceeded more than 5 miles off shore from the point of anchorage.

5. The *Wolcott* then altered its course steaming westward until it passed out of sight but later returned and commenced pursuit. The *Wolcott* came close to the *I'm Alone* and repeated its order to heave to and upon refusal on the ground that she was beyond the limits of the *Wolcott's* jurisdiction, the master



of the *Wolcott* requested permission to come on board. Permission was granted and the master of the *Wolcott* boarded the schooner and had a conference with the master of the *I'm Alone* lasting between one and two hours, at the conclusion of which he returned to the *Wolcott* and abandoned the pursuit. He did not examine the ship's papers or search the vessel. He was apparently satisfied that the *I'm Alone* had committed no breach of the laws of the United States and he left the vessel, stating that he would take no further action but would report the matter to the base.

6. Later on, about 2 o'clock in the afternoon, pursuit was re-commenced by the *Wolcott* which came close and ordered the *I'm Alone* to heave to, threatening fire. After opening fire with several shells, the gun went out of action, after which fire was continued for a time with a quick-firing rifle. The firing proved ineffective and was stopped.

7. The *Wolcott* then followed but did not pursue the *I'm Alone* and continued to follow until the morning of March 22nd, when the schooner was in the vicinity of latitude 25° 41' and longitude 90° 45' or more than 200 miles from the United States coast.

8. The United States coastguard cutter *Dexter* then came up from another direction, joined the *Wolcott* and signalled to the schooner to heave to or be fired upon. The master of the schooner refused on the ground that the coastguard cutter had no jurisdiction on the high seas. Fire was then opened by the *Dexter* with 3-inch gun and rifles with the deliberate intention of sinking the *I'm Alone*, though it was possible in the circumstances to disable the schooner without placing her or the crew in peril. Some 60 or 70 shells struck the schooner crashing through the cabin house, port holes, sails, rigging and main mast, hitting the engines, smashing the lifeboats, bulwarks and foreboom and then into the hull below the waterline. Finally at 9.05 a.m. on the 22nd, the schooner was sunk and the master and crew of 8 men were plunged into the sea which was then rough from a rising gale. Boatswain Leon Mainguy died from drowning but the master and the remaining members of the crew survived and were taken on board the two cutters, the *Dexter* and *Wolcott*, and were there placed in irons and subsequently conveyed to New Orleans, where they were arrested

and kept in custody 48 hours before being admitted to bail. During that time they were interrogated at length by United States customs officials, officers of the coastguard service and others. The charges upon which the arrests were made were subsequently dropped.

9. The claimant Government contends that the sinking of the *I'm Alone* was not justified under the Convention of 23rd January, 1924, or under the principles of International Law. At the time the schooner was sunk she was on the high seas more than 200 miles from the United States coast and at no material time before that was she within an hour's sailing of that coast.

10. There was in the circumstances no right of hot pursuit either under the terms of the Convention or under the principles of International Law. Nor was there in point of fact any continuous or hot pursuit.

11. The master of the *Wolcott* did not comply with the conditions precedent prescribed by Article II of the Convention. He made no examination of the ship's papers or search of the vessel, and he did not establish reasonable cause for belief that the vessel had committed, or was committing or attempting to commit an offence against the laws of the United States, its territories or possessions, prohibiting the importation of alcoholic beverages.

12. The *I'm Alone* at all material times was never within one hour's sailing of the United States coast.

13. In any case the sinking of the *I'm Alone* was an excessive, improper and unreasonable exercise of the rights, if any, which could be exercised under Article II of the Convention.

14. The questions arising out of the action of the coast-guard vessels were discussed in the international correspondence between the two Governments, particularly in (1) a note from the Secretary of State of the United States to the Canadian Minister at Washington, dated March 28th, 1929; (2) a note from the Canadian Minister to the Secretary of State of the United States, dated April 9th, 1929; (3) a note from the Secretary of State of the United States to the Canadian Minister, dated April 17th, 1929; and (4) a note from the Canadian Minis-

ter to the Secretary of State of the United States, dated April 24th, 1929.

The particulars of the claim for compensation for loss or injury suffered by the *I'm Alone*, submitted by the claimant Government are as follows:—

- (1) Claim submitted by the Eugene Creaser Shipping Company Limited, a body corporate, incorporated under the laws of the Province of Nova Scotia, for compensation for the loss of the schooner *I'm Alone*, including the following items:—

Value of hull, including spars, booms, gaffs, locks, and iron work, sails, standing rigging, running rigging for reefs, two anchors and chains;

Value of engines, equipment, and accessories, electric light plant, bilge pumps;

Value of heating plant, plumbing, cooking stove, fuel and water tanks, engine room telegraph, and other engine room accessories;

Value of radio plant;

Value of deck and engine-room stores, spare and consumable;

Value of cabin dishes, cutlery, etc., for master's use;

Value of provisions;

Value of galley cooking utensils;

General compensation.

- (2) Claim submitted by the said Eugene Creaser Shipping Company Limited for compensation for value of cargo;
- (3) Claim submitted by the said Eugene Creaser Shipping Company Limited for general expenses arising out of the sinking, including legal expenses, cost of repatriation of crew, and other costs incurred preceding the commencement of the proceedings;
- (4) Claim submitted by John Thomas Randell, a British subject, master of the *I'm Alone*, for compensation for loss of instruments and personal effects and for general compensation;
- (5) Claim submitted by John Williams, a British subject, a member of the crew of the *I'm Alone*, for compensation for loss of instruments and personal effects and for general compensation;

- (6) Claim submitted by Jens Jansen, a member of the crew of the *I'm Alone*, for compensation for the loss of personal effects and tools and for general compensation;
- (7) Claim submitted by James Barrett, a British subject, a member of the crew of the *I'm Alone*, for compensation for the loss of tools and personal effects and for general compensation;
- (8) Claim submitted by William Wordsworth, a British subject, a member of the crew of the *I'm Alone*; for compensation for the loss of personal effects and for general compensation;
- (9) Claim submitted by Eddie Young, a British subject, a member of the crew of the *I'm Alone*, for compensation for the loss of personal effects and for general compensation;
- (10) Claim submitted by Chesley Hobbs, a British subject, a member of the crew of the *I'm Alone*, for compensation for the loss of engineering tools and personal effects and for general compensation;
- (11) Claim submitted by Edouard Fouchard, a member of the crew of the *I'm Alone*, for compensation for the loss of tools and personal effects and for general compensation;
- (12) Claim submitted by Amanda Mainguy, widow of the late Leon Mainguy, who was a French citizen of St. Pierre Miquelon, and a member of the crew of the *I'm Alone*, and who was drowned at the time of the sinking of the *I'm Alone*, for compensation on behalf of herself and her three infant children, Henriette, Jeanne and John, and for the loss of personal effects and for general compensation.

Dated the 26th day of February, A.D. 1931.

J. E. READ,  
Canadian Agent.

W. N. TILLEY,  
AIMÉ GEOFFRION,  
of Counsel for His Majesty's  
Government in Canada.



**Answer of the Government of the United States of America to the Claim of His Majesty's Government in Canada in Respect of the Ship *I'm Alone*.**

1. It is admitted that the *I'm Alone* sank on March 22, 1929, in the vicinity of latitude 25° 41', longitude 90° 45', and more than 200 miles from the United States coast. It is not admitted that the *I'm Alone* was entitled to be regarded as a British ship, in view of the circumstances of her ownership and registry hereinafter referred to.

2. It is admitted that the *I'm Alone* was an auxiliary schooner built in Lunenburg, in the province of Nova Scotia, and that registry was obtained for her there. It is admitted that at the time she sank the *I'm Alone* was registered in the name of the Eugene Creaser Shipping Company, Limited, a company incorporated under the laws of the province of Nova Scotia. It is averred, however, that the entire beneficial ownership of all the 64 shares of the capital stock of the Eugene Creaser Shipping Company, Limited, was at that date vested in citizens of the United States. The auxiliary schooner *I'm Alone* was originally built at the order of and paid for by a citizen of the United States. She has at all times (with the possible exception of a few months during the spring of 1928) been in fact owned and operated under the direction and control of citizens of the United States for the purpose of transporting intoxicating liquors for delivery within the territorial limits of the United States, in violation of the laws of the United States. For this purpose the beneficial owners of the stock of the Eugene Creaser Shipping Company, Limited, have continuously kept the vessel under Canadian registry and have abused the privilege of both Canadian registry and Canadian incorporation for the sole purpose of committing a fraud against the United States. It is further averred that the nature of the operations of this vessel was well known to His Majesty's Government and was, in fact, the subject of a note dated February 2, 1927, from the Secretary of State to the Ambassador of Great Britain.<sup>1</sup>

3. (a) It is admitted that on March 12, 1929, the *I'm Alone* cleared from Belize (ostensibly for Hamilton, Bermuda) with a cargo of liquor and arrived off the Louisiana coast on or before

---

<sup>1</sup> See *post*, p. 12.

the morning of March 20 at a point more than five hundred miles off the course between Belize and Hamilton. It is denied that when sighted by the Coast Guard Cutter *Wolcott* the *I'm Alone* was anchored at a point  $14\frac{1}{2}$  miles from the shore. On the contrary it is averred that she was then anchored not more than 8.2 miles from the coast-line of the United States at a point between Trinity Shoal and Mulberry Island, La., and well within the distance from the coast of the United States which could be traversed in one hour by the *I'm Alone* and by the contact-vessels by which the liquor on board the schooner was intended to be conveyed to the United States.

(b) It is denied that the speed of the *I'm Alone* under the circumstances was not more than  $7\frac{1}{2}$  nautical miles per hour and under the most favourable circumstances not more than  $9\frac{1}{2}$  nautical miles per hour. On the contrary, it is averred that immediately after weighing anchor the *I'm Alone* developed a speed of over 9 nautical miles per hour. It is further averred that under favourable circumstances the *I'm Alone* was capable of developing a speed of from 14 to 16 nautical miles per hour.

(c) It is averred that at the time of clearance from Belize the master of the *I'm Alone* made a false statement to the Belize customs authorities as to his destination and carried false and fraudulent clearance papers, known by him to be such, which gave Hamilton, Bermuda, as the point of destination; that neither the master nor the owners of the vessel nor the owners of the cargo had any intention that the vessel should proceed to Hamilton, but that it was the definite intention of all of them that she should proceed to the coast of the United States and there discharge her cargo to be smuggled into the United States in violation of the laws of the United States. It is further averred that the place of anchorage referred to in the third paragraph of the claim is not a point on the route from Belize to Hamilton but is more than five hundred miles off said route, as hereinbefore averred.

(d) It is averred that the above-specified point of anchorage was adopted by the master of the *I'm Alone* as a result of instructions from, and pursuant to agreement with, the citizens of the United States who were intending to receive delivery of the *I'm Alone* cargo at that point and to transport it thence into the United States.

(e) It is averred that on a previous voyage of the *I'm Alone* she had sent her life-boats ashore laden with part of her cargo of liquor and that these boats were on March 20, 1929, within the territorial limits of the United States and were then and there ready for use in the discharge of the liquor with which on that date she was laden.

(f) It is averred that when the *I'm Alone* was at anchor she was within four marine leagues of the coast of the United States and was in fact bound for the United States and attempting to commit an offense against the laws of the United States. She was then and there laden with a cargo of intoxicating liquors for which she had no manifest, and it was the intention of her owners and master that these should be smuggled into the United States in violation of the National Prohibition Act, section 3 (41 Stat. 308; U.S.C.A., title 27, sec. 12, p. 854) and of the Supplemental Prohibition Act, section 2 (42 Stat. 222; U.S.C.A., title 27, sec. 56, p. 860), and of the Tariff Act of 1922, section 431 (42 Stat. 950; U.S.C.A., title 19, sec. 241), section 581 (42 Stat. 979; U.S.C.A., title 19, sec. 481), section 583 (42 Stat. 979; U.S.C.A., title 19, sec. 485), section 584 (42 Stat. 980; U.S.C.A., title 19, sec. 486).

4. The averments of paragraph 4 are inaccurate. It is averred that the facts are as follows:

At 5.55 a.m. on March 20, 1929, while the *I'm Alone* was at anchor at the point specified in paragraph 3 hereof, she was sighted by the United States Coast Guard cutter *Wolcott*. The commander of the *Wolcott* immediately recognized the schooner as a rum-runner previously under observation, and he proceeded toward her at full speed. At about 6.10 a.m. the *Wolcott* observed smoke coming from the schooner, which indicated that she was then getting under way. The *Wolcott* thereupon signalled the schooner, which was then at a distance from the coast of the United States not greater than the distance which could be traversed by the schooner in one hour, and by the customary whistle blasts gave notice to her that she was being approached by a vessel of the United States and should stop and submit to boarding and examination. Although these blasts were heard and understood by the master of the *I'm Alone* he ignored the command thus signalled and proceeded from his point of anchorage south by west pursued by the *Wolcott* until 6.23 a.m., when

the schooner changed her course to about 197° true and headed for the open sea with the *Wolcott* in hot pursuit. The *Wolcott* continued to approach the schooner, and the commander recognized her as the notorious *I'm Alone*. At 6.35 a.m. the *Wolcott* came within speaking distance of the *I'm Alone* and the commander of the *Wolcott*, by megaphone, spoke the *I'm Alone* and demanded of her master that he stop his motors and head his vessel up into the wind. The master gave a negative reply and continued on his course for the open sea with the *Wolcott* following in hot pursuit and maintaining close contact.

At 7.12 a.m. the *Wolcott*, by the customary signal, again ordered the *I'm Alone* to stop and by megaphone again demanded of the master that he stop and submit to examination. This command was ignored by the master of the *I'm Alone*. The *Wolcott*, after due warning, then fired three blank shots across the bow of the *I'm Alone*, but the schooner continued on her course with the *Wolcott* in hot pursuit.

It is averred that at the time when the *I'm Alone* was first sighted by the *Wolcott*, and again at the time when first signalled by the *Wolcott*, she was within four marine leagues of the coast of the United States, bound for the United States, and subject to examination, search, and seizure in accordance with provisions of the Tariff Act of 1922, section 581 (42 Stat. 979; U.S.C.A., title 19, sec. 481), and that under the laws of the United States it was the duty of the commander of the *Wolcott* to hail and stop the *I'm Alone*, to examine her manifest, to inspect, search, and examine the vessel, and to use all necessary force to compel compliance with his demand (Tariff Act of 1922).

5. The averments of paragraph 5 are inaccurate. It is averred that the facts are as follows:

At about 8.25 a.m. the *Wolcott* altered her course, steamed westward and spoke the tanker *Hadnot* for the purpose of requesting the captain to check his position, and then returned to the *I'm Alone*. It is particularly averred that at no time during that period was the *I'm Alone* out of sight of the *Wolcott*.

Later, at about 10.25 a.m., the *I'm Alone* and the *Wolcott* being still in close contact, the commander of the *Wolcott* requested permission to come on board the *I'm Alone*, which was granted. The commander of the *Wolcott* thereupon boarded the



*I'm Alone* and conferred with the master for about one hour. At said conference the commander of the *Wolcott* requested permission to examine the ship's papers of the *I'm Alone* and to search the vessel. This request was refused by the master of the *I'm Alone*. It is specifically denied that the commander of the *Wolcott* was satisfied that the *I'm Alone* had committed no breach of the laws of the United States and that he left the vessel stating that he would take no further action. On the contrary, it is averred that the master of the *I'm Alone* admitted to the commander of the *Wolcott* that the cargo of the *I'm Alone* consisted of intoxicating liquors for which he had no manifest, and that the commander of the *Wolcott* thereupon advised the master of the *I'm Alone* that he was subject to the jurisdiction of the United States and that he should stop and permit a search of his vessel. The master of the *I'm Alone* again refused to permit this and the commander of the *Wolcott* then returned to his own vessel. The *Wolcott* then, previously, and at all times thereafter until the sinking of the *I'm Alone*, maintained close contact with her and was engaged in continuous and hot pursuit.

6. The averments of paragraph 6 are inaccurate. It is averred that the facts are as follows:

After the return on board of her commander the *Wolcott* continued as theretofore in hot pursuit of the *I'm Alone*. At about 1.20 p.m. the *Wolcott*, being still in hot pursuit, again directed the *I'm Alone* to heave to and advised the master of the *I'm Alone* that unless this request was complied with the *Wolcott* would commence firing in fifteen minutes. The *I'm Alone* disregarded this communication, refused to heave to, and continued on her course. At about 2.00 p.m. and pursuant to said warning, the *Wolcott* fired three blank shots across the bow of the *I'm Alone*. Immediately thereafter the *Wolcott* fired shells, first across the bow of the *I'm Alone* and later at the sails and rigging of the *I'm Alone*. None of these shells struck the *I'm Alone*. It is admitted that at about 2.28 p.m. the gun of the *Wolcott* jammed and became disabled.

7. The averments of paragraph 7 are inaccurate. It is averred that the facts are as follows:

When the *Wolcott's* gun went out of action the *Wolcott* continued in hot pursuit of the *I'm Alone* and her commander

by radio communicated the situation to the United States Coast Guard Division Commander requesting that another cutter be sent to his assistance. At no time did the *Wolcott* discontinue hot pursuit, and her commander was at all times ready and able to board and search the *I'm Alone*, if permitted by her master to do so. The hot pursuit continued through the night of the 21st of March, and it is admitted that on the morning of the 22nd of March the *I'm Alone* and the *Wolcott* were approximately in the position specified in the 7th paragraph of the claim.

8. The averments of paragraph 8 are inaccurate. It is averred that the facts are as follows:

At about 7.45 a.m. on the morning of March 22 the United States Coast Guard cutter *Dexter*, pursuant to instructions from the United States Coast Guard Division Commander to join and assist the *Wolcott*, joined the *Wolcott* in the pursuit of the *I'm Alone*. The commander of the *Wolcott* informed the commander of the *Dexter* of the existing situation, and the latter thereupon called upon the *I'm Alone* to heave to. The master of the *I'm Alone* ignored this summons. The commander of the *Dexter* thereupon warned the *I'm Alone* that unless she stopped, fire would be opened to sink her. It is admitted that the master of the *I'm Alone* refused to heave to. Accordingly, at about 8.22 a.m. fire was opened by the *Dexter*, at first with blanks and then with shells, directed first across the bow of the schooner *I'm Alone* and then through the sails and rigging. The *Dexter* then ceased firing and again requested the *I'm Alone* to stop. Upon the second refusal fire was reopened and was this time directed at the hull of the vessel, which was sunk at 9.03 a.m. The master and crew of the *I'm Alone*, who had jumped from the vessel as she was about to sink, were picked up by the crews of the *Dexter* and the *Wolcott*, who made every effort to rescue them. All were brought alive and unhurt on board the *Dexter* or *Wolcott*, with the exception of Boatswain Leon Mainguy, whose body was recovered and attempts made to resuscitate him.

It is admitted that the master and crew of the *I'm Alone* were placed in irons and conveyed to New Orleans, where they were kept in custody for 48 hours.

The placing in irons of the master and members of the crew of the *I'm Alone* was in pursuance of a general order dated November 20, 1928, which was issued because of previous mur-

ders of Coast Guard officers by officers or members of crews of rum-runners who, after seizure, had been carried shoreward unconfined.

9-13. In opposition to the claim of His Majesty's Government in Canada, as set forth in paragraphs 9 to 13 inclusive, the Government of the United States contends:

(a) That at 6.10 a.m. on March 20, 1929, when the *Wolcott* hailed the *I'm Alone* and signalled her to heave to and submit to examination, the *I'm Alone* was in fact within one hour's sailing distance from the coast of the United States and at a point within the applicable provision of the convention;

(b) That the *I'm Alone* was then and there within four marine leagues of the coast of the United States, bound for the United States, loaded with intoxicating liquor suitable for use for beverage purposes, which it was the intention of her master, of her owners, and of the shippers of the cargo, to discharge into contact-boats in order that it might be smuggled into the United States in violation of law;

(c) That when the commander of the *Wolcott* hailed the *I'm Alone*, as above, he had reasonable cause for belief that the vessel was being used in furtherance of a conspiracy to violate the laws of the United States between her master, her owners, and the owners of her cargo, of the one part, and persons on shore awaiting her arrival, of the other part, and that she was then and there actually attempting to commit an offence against the said laws;

(d) That the act of the master of the *I'm Alone*, in refusing to heave to and submit to examination and in thereupon heading for the open sea, justified the commander of the *Wolcott* in taking up and continuing her pursuit, and that the doctrine of hot pursuit, as recognized in international law, is an incident alike of the customary three-mile limit, of the limit of four marine leagues established by the municipal legislation of the United States and of Canada, and of the conventional limit applicable in the instant case;

(e) That the hot pursuit begun by the *Wolcott* within the said conventional limit was maintained without interruption until the moment when the *I'm Alone* sank; that there is in international law no limit of space or time to such pursuit upon the high seas; that there never was a moment during the pur-



suit when the *I'm Alone* could have been boarded peaceably from the *Wolcott* without the consent and co-operation of the master of the *I'm Alone*; that the arrival and co-operation of the *Dexter* pending hot pursuit by the *Wolcott* and in response to the *Wolcott's* request for assistance, and the action of the *Dexter* in firing upon the *I'm Alone* after due warning, were acts done by the United States in the lawful exercise of rights conferred by the convention and by international law; and that no excessive, improper, or unreasonable use of force took place, but such use only as was necessary and proper to accomplish the purpose of the convention.

14. It is admitted that correspondence between the two Governments took place as alleged in paragraph 14 and that in addition to the communications therein specified the Government of the United States, through the Secretary of State, addressed a note to the British Ambassador as long ago as February 2, 1927, in which attention was called to the illegal traffic in which the *I'm Alone* was then engaged. A copy of this note is submitted to the Commissioners and is annexed to this answer. It is averred that no reply to this note was made by His Majesty's Government.

15. With respect to the claim for compensation and the particulars thereof put forward by His Majesty's Government in Canada, the position of the Government of the United States is as follows:

(a) That the decisive cause of all the loss and damage to persons and property incident to the sinking of the *I'm Alone* was the unlawful act of her master in refusing to heave to when thereunto summoned by officers of the United States, who, in so summoning, were acting in the course of their duty and under authority of law;

(b) That the Government of the United States has done no act and has violated no duty in the premises which subjects that Government to liability for compensation for any of the loss or damage specified in the claim;

(c) That the only persons beneficially interested in the claim are, first, citizens of the United States conspiring to violate the laws of the United States and, secondly, shippers, seamen, and others who were voluntary parties to the conspiracy and accessorial participants therein. It is accordingly suggested



that when all the facts are taken into consideration it will appear that there has been no affront to the dignity of His Majesty's Government or any such invasion of British sovereignty as gives just occasion for the pressing of the said claim for compensation.

Dated the eighth day of July, 1931.

GEORGE WHARTON PEPPER,

*Agent for the United States*

THEODORE S. PAUL,

*Assistant to the Agent for the United States.*

## ANNEX

*Note of the Secretary of State of the United States (Mr. Frank B. Kellogg) to the British Ambassador (Sir Esme Howard)*<sup>1</sup>

WASHINGTON, February 2, 1927.

EXCELLENCY: Referring to the statements contained in the *aide-mémoire* dated March 27, 1926, which you were so good as to leave at this Department to the effect that administrative action would be taken to prosecute masters for infractions of the Customs Act when reasonable grounds for suspicion were available for believing them guilty of making false declarations in regard to their destinations, I have the honour to state that the appropriate authority of this Government has informed me that the master of the British schooner *I'm Alone* is alleged to have made false declarations as to his destination and to have obtained a clearance from Halifax on August 24, 1926, for Habana, with a cargo of liquor. I have received a despatch dated December 15, 1926, from the American Consul General at Habana stating that he has received an official communication dated December 9, 1926, from the Captain of the Port of Habana stating that having scrutinized the record books of arrivals of vessels at Habana it does not appear that the schooner *I'm Alone* arrived at Habana during the period from August 24, 1926, to December 9, 1926.

---

<sup>1</sup>By a note of September 21, 1929, the British Ambassador advised the Secretary of State that "no reply would seem to have been returned by this Embassy to the State Department's note of February 2, 1927."

I enclose two copies of a statement prepared by the authorities of this Government respecting the operations of this vessel.

As it appears that this vessel has been hovering off the coast of the United States, engaged in smuggling operations, I shall be grateful if you will be so good as to cause an investigation to be made regarding the operations of the schooner *I'm Alone* and if the circumstances warrant it, I hope that appropriate proceedings will be taken to prosecute the master for having made false declarations as to his destination. Reference is made in this connection to the views set forth in your note No. 821 of December 27, 1926.

I shall also appreciate it if you will inform me whether it is possible to prosecute the shippers of the cargo on this vessel on the ground that they have falsely billed it.

Accept [etc.].

For the Secretary of State:

JOSEPH C. GREW.

[Enclosure]

# HISTORY OF THE OPERATIONS OF THE BRITISH SCHOONER "I'M ALONE," FROM 30TH APRIL, 1924, to 8TH JANUARY, 1927

## 1924

30 April.....16 miles East by North Cape Ann, Mass.  
 14 May.....Arrived Lunenburg, N.S.  
 26 "....."  
 4 August.....At Lunenburg.  
 5 ".....Cleared Lunenburg for Habana.  
 20 ".....Arrived Matanzas, Cuba.  
 21 September.....On Stellwagen Bank, Massachusetts Bay.  
 1 October.....At Lunenburg.  
 17 November.....Cleared Lunenburg for Nassau.

## 1925

6 January.....On Stellwagen Bank, Massachusetts Bay.  
 8 "....."  
 9 "....."  
 10 "....."  
 17 "....."  
 21 "....."  
 24 "....."  
 25 "....."  
 31 ".....Arrived Lunenburg.  
 8 February.....On Stellwagen Bank, Massachusetts Bay.  
 9 "....."  
 13 "....."  
 14 "....."  
 17 "....."

25	February.....	Cleared Lunenburg for St. John, N.B.
28	" .....	Cleared St. John, N.B., for Habana, with 5,000 gallons alcohol.
9	March.....	On Stellwagen Bank.
12	" .....	"
17	" .....	"
19	" .....	"
22	" .....	"
23	" .....	"
24	" .....	"
25	" .....	"
27	" .....	"
31	" .....	"
1	April.....	"
3	" .....	"
4	" .....	"
6	" .....	"
8	" .....	"
10	" .....	"
13	" .....	"
15	" .....	"
16	" .....	"
17	" .....	"
18	" .....	"
19	" .....	"
21	" .....	"
23	" .....	"
24	" .....	"
25	" .....	"
27	" .....	"
28	" .....	"
29	" .....	"
2	May.....	"
4	" .....	Arrived Lunenburg.
12	" .....	Departed Lunenburg for St. John, N.B.
21	" .....	Departed St. John, N.B., for Habana.
28	" .....	On Stellwagen Bank.
1	June.....	"
22	" .....	On Fippennies Bank, Massachusetts Bay.
24	" .....	Arrived Yarmouth, N.S., with 5,200 cases of liquor.
31	July.....	Departed Yarmouth for Halifax with cargo.
13	August.....	East of Cape Ann.
14	" .....	"
15	" .....	"
18	" .....	"
24	" .....	42-27 North, 69-10 West.
25	" .....	Cashes Ledge.
9	September.....	East of Cape Cod.
10	" .....	"
11	" .....	"
12	" .....	"
13	" .....	"
16	" .....	Arrived Yarmouth from sea with 3,800 cases of liquor.
30	" .....	Departed Yarmouth for sea with 3,800 cases of liquor.
9	October.....	East of Cape Ann.
23	" .....	30 miles East Cape Cod Light House.
24	" .....	East of Cape Ann.

1	November.....	25 miles East Boston Light Vessel.
2	" .....	"
3	" .....	"
4	" .....	"
5	" .....	42-15 North, 69-15 West.
6	" .....	42-15 North, 69-10 West.
28	" .....	Arrived Lunenburg, week ending.
5	December.....	Cleared Lunenburg for Habana, week ending.
7	" .....	Arrived Yarmouth with 3,000 cases alcohol.
13	" .....	Cleared Yarmouth for Habana with 3,000 cases alcohol.
31	" .....	East of Cape Ann.

## 1926

1	January.....	East of Cape Ann.
2	" .....	"
4	" .....	42-34 North, 69-07 West.
9	" .....	East of Cape Ann.
10	" .....	"
11	" .....	"
13	" .....	"
14	" .....	42-36 North, 69-40 West.
24	" .....	East of Cape Ann.
26	" .....	"
27	" .....	"
28	" .....	Arrived Yarmouth with 2,850 cases alcohol.
7	February.....	Departed Yarmouth with 2,850 cases alcohol.
13	" .....	On Fippennies Bank, Massachusetts Bay.
14	" .....	East of Cape Ann.
22	" .....	East of Cape Cod.
23	" .....	"
24	" .....	"
25	" .....	"
13	March.....	East of Cape Cod.
14	" .....	East of Cape Ann.
15	" .....	"
16	" .....	"
22	" .....	East of Cape Cod.
23	" .....	60 miles east of Cape Ann.
24	" .....	East of Cape Ann.
25	" .....	"
26	" .....	"
27	" .....	"
28	" .....	"
29	" .....	"
30	" .....	"
31	" .....	"
2	April.....	42-30 North, 69-30 West.
3	" .....	42-32 North, 69-25 West.
5	" .....	42-35 North, 69-50 West.
6	" .....	" "
7	" .....	East of Boston Light Vessel.
10	" .....	Fippennies Ledge, Massachusetts Bay.
11	" .....	East of Cape Ann.
13	" .....	East of Boston Light Vessel.
14	" .....	"
15	" .....	"
16	" .....	"



18	April.....	East of Cape Ann.
19	" .....	"
20	" .....	"
21	" .....	"
22	" .....	"
23	" .....	"
24	" .....	"
26	" .....	Arrived Yarmouth with 1,786 cases of liquor.
2	May.....	Sailed from Yarmouth with 1,786 cases of liquor.
6	" .....	On Cashes Ledge, Massachusetts Bay.
7	" .....	"
8	" .....	Vicinity of Cashes Ledge.
9	" .....	31 miles East $\frac{1}{2}$ North Cape Ann Buoy.
10	" .....	East of Cape Ann.
11	" .....	45 miles East of Thatcher's Island.
12	" .....	On Cashes Ledge.
13	" .....	"
14	" .....	East of Cape Cod.
18	" .....	15 miles East Northeast Cape Cod.
21	" .....	42-00 North, 68-19 West.
22	" .....	42-10 North, 67-30 West.
25	" .....	Arrived Lunenburg, N.S.
15	June.....	At Yarmouth, N.S.
25	" .....	Arrived Halifax, N.S., from Lunenburg in ballast.
4	July.....	Departed Halifax for Habana with 2,706 packages of liquor.
5	" .....	42-12 North, 68-56 West.
6	" .....	East of Cape Cod.
7	" .....	Northeast of Cape Cod.
8	" .....	40 miles East by South Highland Light House, Cape Cod.
9	" .....	27 miles East Highland Light House.
10	" .....	47 miles East Southeast Highland Light House.
11	" .....	26 miles East Highland Light House.
14	" .....	18 miles East Southeast Cape Cod Light House.
15	" .....	18 " "
16	" .....	24 " "
20	" .....	42-24 North, 69-23 West.
21	" .....	16 miles East Cape Cod Light House.
22	" .....	29 " "
23	" .....	34 " "
24	" .....	East of Cape Cod.
26	" .....	"
27	" .....	"
28	" .....	"
29	" .....	"
30	" .....	"
31	" .....	"
9	August.....	East of Cape Cod.
12	" .....	Arrived Halifax from sea.
24	" .....	Departed Halifax for Habana with 2,975 cases of liquor.
29	" .....	East of Cape Cod, Mass.
30	" .....	"
31	" .....	"
1	September.....	"
4	" .....	22 miles Northeast Cape Cod Light House.
5	" .....	"
6	" .....	"
7	" .....	43 miles East by South (Magnetic) Boston Light Vessel.

8	September.....	Northeast of Cape Cod Light House.
9	"	"
10	"	"
12	"	East of Cape Ann, Mass.
13	"	"
14	"	"
15	"	East of Boston Light Vessel.
16	"	"
17	"	"
18	"	"
19	"	"
20	"	"
21	"	East of Cape Ann, Mass.
22	"	Trailed to Yarmouth, N.S.
26	"	Departed Yarmouth, N.S.
29	"	East of Cape Cod.
30	"	Northeast of Cape Cod.
1	October.....	"
2	"	"
3	"	"
4	"	"
5	"	Arrived Yarmouth, N.S., with cargo of liquor.
7	"	Departed Yarmouth, N.S., with cargo of liquor.
13	"	East of Cape Ann.
14	"	"
15	"	"
16	"	"
17	"	"
18	"	"
19	"	42-35 North, 68-18 West.
20	"	East of Cape Ann.
22	"	Arrived Yarmouth from sea with cargo of liquor.
24	"	Departed Yarmouth for sea with cargo of liquor.
4	November.....	Arrived St. Pierre from Yarmouth.
20	"	At Liverpool, N.S.
1	December.....	Arrived Halifax from Liverpool in ballast.
9	"	Departed Halifax for St. Pierre in ballast.
11	"	Arrived St. Pierre from Halifax.
16	"	Departed St. Pierre for sea.
24	"	East of Cape Cod.
25	"	30 miles South Southwest Seal Island, N.S.

1927

6	January.....	Vicinity of Nantucket Light Ship.
8	"	"

## APPENDIX D

### **Directions from the Commissioners Nominated by the High Contracting Parties Under the Provisions of the 4th Article of a Convention Concluded on 23rd January, 1924, Respecting the Regulation of the Liquor Traffic.**

1. The course to be followed by the Commissioners in this reference was outlined by a memorandum dated September 22, 1930, which was approved by an exchange of notes; viz., Note No. 219, dated October 30, 1930, from the Canadian Chargé d'Affaires to the Secretary of State, and the answering note, dated November 14, 1930, from the Secretary of State to the Canadian Chargé d'Affaires.

2. The memorandum in its 4th and 5th sections provided:—

4. It is desired by the two Governments that the claim should receive the joint consideration of the two Commissioners nominated in accordance with the terms of Article 4. To this end it is not desired that their consideration should be restricted. In order, however, to place the claim before the Commissioners, it is proposed that the following preliminary procedure should be adopted:

*First.*—The Canadian Agent shall formulate the claim, outlining the substance of the Canadian contention and specifying the heads of claim. A copy of this claim shall be transmitted to the United States Agent and to each Commissioner.

*Second.*—The Agent for the United States shall then formulate the answer, outlining the substance of the United States contention as to liability, dealing separately with each head of claim. A copy of the answer shall be transmitted to the Canadian Agent and to each Commissioner.

*Third.*—Further statements by way of reply may be made if necessary.

*Fourth.*—The Agents shall thereupon request the Commissioners to meet together to consider the claim and answer, to give directions and to settle the further procedure to be adopted.

5. The object of this preliminary procedure is to make it possible to get the whole case before the Commissioners in outline, in order to elicit their views as to whether any further investigations are necessary and, if so, as to the manner in which they should be made and presented before them. It is anticipated that, with a full appreciation of the points that are at issue in this claim, the Commissioners will be in a position to give directions as to further procedure.

3. Pursuant to requests from the Agents of the High Contracting Parties, the Commissioners have met and have considered the Claim and the Answer, and have concurred in giving the following directions to the Agents:—

- (a) In order to facilitate the consideration by the Commissioners of the Claim of the *I'm Alone*, it is directed that attention should first be given to certain questions of law. These questions are essential to the consideration of the Claim, and they do not depend upon the taking of evidence, but arise directly from the Claim and Answer which have been considered.
- (b) The first question is whether the Commissioners may enquire into the beneficial or ultimate ownership of the *I'm Alone* or of the shares of the corporation that owned the ship. If the Commissioners are authorized to make this enquiry, a further question arises as to the effect of indirect ownership and control by citizens of the United States upon the Claim; viz., whether it would be an answer to the Claim under the Convention, or whether it would go to mitigation of damages, or whether it would merely be a circumstance that should actuate the claimant Government in refraining from pressing the claim, in whole or in part.
- (c) The second question relates to the right of hot pursuit. Further, it has two aspects, and it is based upon the assumption that the averments in the Answer with regard to the location and speed of the *I'm Alone* are true. The question in its first aspect is whether the Government of the United States under the Convention has the right of hot pursuit where the offending vessel is within an hour's sailing distance of the shore at the commencement of the hot pursuit and beyond the distance at its termina-



tion. The question in its second aspect is whether the Government of the United States has the right of hot pursuit of a vessel when the pursuit commenced within the distance of twelve miles established by the revenue laws of the United States and was terminated on the high seas beyond that distance.

- (d) The third question is based upon the assumption that the United States Government had the right of hot pursuit in the circumstances and was entitled to exercise the rights under Article 2 of the Convention at the time when the *Dexter* joined the *Wolcott* in the pursuit of the *I'm Alone*. It is also based upon the assumption that the averments set forth in paragraph 8 of the Answer are true. The question is whether, in the circumstances, the Government of the United States was legally justified in sinking the *I'm Alone*.
- (e) With a view to the consideration of these questions of law, the Agents for the High Contracting Parties are requested to submit written or printed briefs—an opening brief on behalf of the Government of Canada, and answering brief on behalf of the Government of the United States, and a reply brief on behalf of the Government of Canada. It is requested that these briefs should be filed within the next few months, and thereupon the Agents should make arrangements at the earliest convenient opportunity for an oral argument.
- (f) Further directions may be given either before or after the oral argument either with a view to amending or supplementing the directions now given or with a view to the consideration of other aspects of the Claim.

WILLIS VAN DEVANTER.  
LYMAN P. DUFF.

Jan. 28, 1932.

## APPENDIX E

**Certain Sections Taken from Part I of the Merchant Shipping Act, 1894, Including Sections: 1, 2, 3, 9, 25, 28, 56, 57, 58, 67, 69, 71, 72, 73, 74, 76, 91.**

### PART I.—REGISTRY

#### QUALIFICATIONS FOR OWNING BRITISH SHIPS

1. A ship shall not be deemed to be a British ship unless owned wholly by persons of the following description (in this Act referred to as persons qualified to be owners of British ships) namely,

- (a) Natural-born British subjects;
- (b) Persons naturalized by or in pursuance of an Act of Parliament of the United Kingdom, or by or in pursuance of an Act or ordinance of the proper legislative authority in a British possession;
- (c) Persons made denizens by letters of denization; and
- (d) Bodies corporate established under and subject to the laws of some part of Her Majesty's dominions, and having their principal place of business in those dominions:

Provided that any person who either

- (i) being a natural-born British subject has taken the oath of allegiance to a foreign sovereign or state or has otherwise become a citizen or subject of a foreign state; or
  - (ii) has been naturalized or made a denizen as aforesaid;
- shall not be qualified to be owner of a British ship unless, after taking the said oath, or becoming a citizen or subject of a foreign state, or on or after being naturalized or made denizen as aforesaid, he has taken the oath of allegiance to Her Majesty the Queen, and is during the time he is owner of the ship either resident in Her Majesty's dominions, or partner in a firm actually carrying on business in Her Majesty's dominions.

#### OBLIGATION TO REGISTER BRITISH SHIPS

2. (1) Every British ship shall, unless exempted from registry, be registered under this Act.

(2) If a ship required by this Act to be registered is not registered under this Act she shall not be recognized as a British ship.

(3) A ship required by this Act to be registered may be detained until the master of the ship, if so required, produces the certificate of the registry of the ship.

3. The following ships are exempted from registry under this Act:—

(1) Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of the ships are resident:

(2) Ships not exceeding thirty tons burden and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of Saint Lawrence, or on such portions of the coasts of Canada as lie bordering on that gulf.

9. A person shall not be entitled to be registered as owner of a ship or of a share therein until he, or in the case of a corporation the person authorized by this Act to make declarations on behalf of the corporation, has made and signed a declaration of ownership, referring to the ship as described in the certificate of the surveyor, and containing the following particulars:—

(i) A statement of his qualifications to own a British ship, or in the case of a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a British ship:

(ii) A statement of the time when and the place where the ship was built, or, if the ship is foreign built, and the time and place of building unknown, a statement that she is foreign built, and that the declarant does not know the time or place of her building; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or in the case of a ship condemned, a statement of the time place and court at and by which she was condemned:

(iii) A statement of the name of the master:

(iv) A statement of the number of shares in the ship of which he or the corporation, as the case may be, is entitled to be registered as owner:

(v) A declaration that, to the best of his knowledge and belief, no unqualified person or body of persons is entitled as owner to any legal or beneficial interest in the ship or any share therein.

25. Where a registered ship or a share therein is transferred, the transferee shall not be entitled to be registered as owner thereof until he, or, in the case of a corporation, the person authorized by this Act to make declarations on behalf of the corporation, has made and signed a declaration (in this Act called a declaration of transfer) referring to the ship, and containing—

- (a) a statement of the qualification of the transferee to own a British ship, or if the transferee is a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a British ship; and
- (b) a declaration that, to the best of his knowledge and belief, no unqualified person or body of persons is entitled as owner to any legal or beneficial interest in the ship or any share therein.

28. (1) Where the property in a registered ship or share therein is transmitted on marriage, death, bankruptcy, or otherwise to a person not qualified to own a British ship, then

if the ship is registered in England or Ireland, the High Court; or

if the ship is registered in Scotland, the Court of Session; or

if the ship is registered in any British possession, the court having the principal civil jurisdiction in that possession; or

if the ship is registered in a port of registry established by Order in Council under this Act, the British court having the principal civil jurisdiction there;

may on application by or on behalf of the unqualified person, order a sale of the property so transmitted, and direct that the proceeds of the sale, after deducting the expenses thereof, be paid to the person entitled under such transmission or otherwise as the court direct.



(2) The court may require any evidence in support of the application they think requisite, and may make the order on any terms and conditions they think just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) Every such application for sale must be made within four weeks after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) as the court allow.

(4) If such an application is not made within the time aforesaid, or if the court refuse an order for sale, the ship or share transmitted shall thereupon be subject to forfeiture under this Act.

#### TRUSTS AND EQUITABLE RIGHTS

56. No notice of any trust, express, implied, or constructive, shall be entered in the register book or be receivable by the registrar, and, subject to any rights and powers appearing by the register book to be vested in any other person, the registered owner of a ship or of a share therein shall have power absolutely to dispose in manner in this Act provided of the ship or share, and to give effectual receipts for any money paid or advanced by way of consideration.

57. The expression "beneficial interest," where used in this Part of this Act, includes interests arising under contract and other equitable interests; and the intention of this Act is, that without prejudice to the provisions of this Act for preventing notice of trusts from being entered in the register book or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees, and without prejudice to the provisions of this Act relating to the exclusion of unqualified persons from the ownership of British ships, interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships in respect of their interest therein in the same manner as in respect of any other personal property.

## LIABILITY OF BENEFICIAL OWNER

58. Where any person is beneficially interested, otherwise than by way of mortgage, in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this or any other Act on the owners of ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such penalties against both or either of the aforesaid parties, with or without joining the other of them.

67. (1) If any person in the case of any declaration made in the presence of or produced to a registrar under this Part of this Act, or in any document or other evidence produced to such registrar

- (i) wilfully makes, or assists in making, or procures to be made any false statement concerning the title to or ownership of, or the interest existing in any ship, or any share in a ship; or
- (ii) utters, produces, or makes use of any declaration, or document containing any such false statement knowing the same to be false,

he shall in respect of each offence be guilty of a misdemeanor.

(2) If any person wilfully makes a false declaration touching the qualification of himself or of any other person or of any corporation to own a British ship or any share therein, he shall for each offence be guilty of a misdemeanor, and that ship or share shall be subject to forfeiture under this Act, to the extent of the interest therein of the declarant, and also, unless it is proved that the declaration was made without authority, of any person or corporation on behalf of whom the declaration is made.

69. (1) If a person uses the British flag and assumes the British national character on board a ship owned in whole or in part by any persons not qualified to own a British ship, for the purpose of making the ship appear to be a British ship, the ship shall be subject to forfeiture under this Act, unless the assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

(2) In any proceeding for enforcing any such forfeiture the burden of proving a title to use the British flag and assume the British national character shall lie upon the person using and assuming the same.

71. If an unqualified person acquires as owner, otherwise than by such transmission as hereinbefore provided for, any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, that interest shall be subject to forfeiture under this Act.

72. Where it is declared by this Act that a British ship shall not be recognized as a British ship, that ship shall not be entitled to any benefits, privileges, advantages, or protection usually enjoyed by British ships nor to use the British flag or assume the British national character, but so far as regards the payment of dues, the liability to fines and forfeiture, and the punishment of offences committed on board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognized British ship.

73. (1) The red ensign usually worn by merchant ships, without any defacement or modification whatsoever, is hereby declared to be the proper national colours for all ships and boats belonging to any British subject, except in the case of Her Majesty's ships or boats, or in the case of any other ship or boat for the time being allowed to wear any other national colours in pursuance of a warrant from Her Majesty or from the Admiralty.

(2) If any distinctive national colours, except such red ensign or except the Union Jack with a white border, or if any colours usually worn by Her Majesty's ships or resembling those of Her Majesty, or if the pendant usually carried by Her Majesty's ships or any pendant resembling that pendant, are or is hoisted on board any ship or boat belonging to any British subject without warrant from Her Majesty or from the Admiralty, the master of the ship or boat, or the owner thereof, if on board the same, and every other person hoisting the colours or pendant, shall for each offence incur a fine not exceeding five hundred pounds.

(3) Any commissioned officer on full pay in the military or naval service of Her Majesty, or any officer of customs in Her Majesty's dominions, or any British consular officer, may board any ship or boat on which any colours or pendant are hoisted contrary to this Act, and seize and take away the colours or pendant, and the colours or pendant shall be forfeited to Her Majesty.

(4) A fine under this section may be recovered with costs in the High Court in England or Ireland, or in the Court of Session in Scotland, or in any Colonial Court of Admiralty or Vice-Admiralty Court within Her Majesty's dominions.

(5) Any offence mentioned in this section may also be prosecuted, and the fine for it recovered, summarily, provided that—

- (a) where any such offence is prosecuted summarily, the court imposing the fine shall not impose a higher fine than one hundred pounds; and
- (b) nothing in this section shall authorize the imposition of more than one fine in respect of the same offence.

74. (1) A ship belonging to a British subject shall hoist the proper national colours

- (a) on a signal being made to her by one of Her Majesty's ships (including any vessel under the command of an officer of Her Majesty's navy on full pay), and
- (b) on entering or leaving any foreign port, and
- (c) if of fifty tons gross tonnage or upwards, on entering or leaving any British port.

(2) If default is made on board any such ship in complying with this section, the master of the ship shall for each offence be liable to a fine not exceeding one hundred pounds.

(3) This section shall not apply to a fishing boat duly entered in the fishing boat register and lettered and numbered as required by the Fourth Part of this Act.

#### FORFEITURE OF SHIP

76. (1) Where any ship has either wholly or as to any share therein become subject to forfeiture under this Part of this Act,

- (a) any commissioned officer on full pay in the military or naval service of Her Majesty;



- (b) any officer of customs in Her Majesty's dominions; or
- (c) any British consular officer,

may seize and detain the ship, and bring her for adjudication before the High Court in England or Ireland, or before the Court of Session in Scotland, and elsewhere before any Colonial Court of Admiralty or Vice-Admiralty Court in Her Majesty's dominions, and the court may thereupon adjudge the ship with her tackle, apparel, and furniture to be forfeited to Her Majesty, and make such order in the case as to the court seems just, and may award to the officer bringing in the ship for adjudication such portion of the proceeds of the sale of the ship, or any share therein, as the court think fit.

(2) Any such officer as in this section mentioned shall not be responsible either civilly or criminally to any person whomsoever in respect of any such seizure or detention as aforesaid, notwithstanding that the ship has not been brought in for adjudication, or if so brought in is declared not liable to forfeiture, if it is shown to the satisfaction of the court before whom any trial relating to such ship or such seizure or detention is held that there were reasonable grounds for such seizure or detention; but if no such grounds are shown the court may award costs and damages to any party aggrieved, and make such other order in the premises as the court thinks just.

#### APPLICATION OF PART I

91. This Part of this Act shall apply to the whole of Her Majesty's dominions, and to all places where Her Majesty has jurisdiction.

## APPENDIX F

### International Correspondence and Other Documents

#### EXPLANATORY NOTE

It was contemplated that certain international correspondence and other documents relating to the negotiations which preceded the conclusion of the Convention between His Majesty and the United States of America, would be printed as an appendix to the Brief submitted on behalf of His Majesty's Government in Canada. Upon requesting authority thus to publish certain documents, it was ascertained that the Government of the United States of America desired that certain other documents should be submitted at the same time, for the joint consideration of the Commissioners. In these circumstances, it was agreed by the two Governments that they should be printed in a separate appendix for submission to the Commissioners, indicating in the appendix that certain parts were included at the instance of the Canadian Government, and that certain other parts were included at the instance of the United States Government. It was also agreed to set forth the reservations and conditions relating to the consents to publish, as embodied in the previous correspondence.

Accordingly, the international correspondence and other documents in question are set forth in two parts. Part I includes the documents that are submitted at the instance of the Canadian Government, and Part II includes the documents which are submitted at the instance of the United States Government. The United States Government also requested that certain of the documents in Part I should be submitted to the Commissioners, and these are indicated in the Table of Contents, by asterisks.

It was agreed by the two Governments that publication of these documents, including the international correspondence, and their submission to the Commissioners for their joint considera-

tion in the "I'm Alone" case, should not be regarded to be an admission on the part of the United States or Canada of the relevancy of these documents, and that all rights and objections on behalf of either Government, concerning the relevancy, materiality and competency of these documents, should be strictly reserved for submission to the Commissioners.

J. E. READ,  
*Canadian Agent.*

# TABLE OF CONTENTS

## PART I

### International Correspondence Leading up to the Convention

	PAGE
1. Note from the Secretary of State to the British Ambassador, June 26, 1922* .....	87
2. Note from the British Ambassador to the Secretary of State, October 13, 1922* .....	91
3. Draft Treaty handed to the British Chargé d'Affaires by the Secretary of State on the 11th June, 1923. ....	93
4. Aide Mémoire from the British Chargé d'Affaires to the Secretary of State, July 14, 1923. ....	95
5. Note from the Secretary of State to the British Chargé d'Affaires, July 19, 1923* .....	95
6. Note from the British Chargé d'Affaires to the Acting Secretary of State, September 17, 1923* .....	98
7. Note from the British Chargé d'Affaires to the Secretary of State, October 29, 1923. ....	102
8. Note from the Secretary of State to the British Chargé d'Affaires, November 2, 1923. ....	103
9. Note from the British Chargé d'Affaires to the Secretary of State, November 23, 1923. ....	104
10. Note from the Secretary of State to the British Chargé d'Affaires, November 26, 1923. ....	106
11. Draft Treaty handed to the Secretary of State by the British Chargé d'Affaires on the 3rd December, 1923..	110
12. Aide Mémoire from the Secretary of State to the British Chargé d'Affaires, December 7, 1923. ....	112

---

\*The documents marked with an asterisk are submitted at the instance of both Governments.



## PART II

International Correspondence Submitted at the Instance of the  
United States Government

	PAGE
13. Note from the British Ambassador to the Secretary of State, December 6, 1922.....	115
14. Note from the British Chargé d'Affaires to the Secretary of State, July 10, 1923.....	116
15. Note from the Secretary of State to the British Chargé d'Affaires, July 16, 1923.....	117
16. Note from the Secretary of State to the British Ambassador, February 26, 1923.....	120
17. Note from the British Chargé d'Affaires to the Secretary of State, October 24, 1923.....	121
18. Note from the British Chargé d'Affaires to the Secretary of State, January 2, 1924.....	123
19. Note from the Secretary of State to the British Ambassador, January 22, 1924 (together with enclosures).....	126
20. Note from the British Ambassador to the Secretary of State, May 14, 1923.....	140
21. Note from the British Chargé d'Affaires to the Secretary of State, June 19, 1923 (together with enclosed report)..	141
22. Note from the Secretary of State to the British Chargé d'Affaires, July 2, 1923.....	145

## PART I

### International Correspondence Leading up to the Convention

#### 1. NOTE FROM THE SECRETARY OF STATE TO THE BRITISH AMBASSADOR

*(Reprinted from Press Release of February 20, 1927)*

DEPARTMENT OF STATE,

WASHINGTON, June 26, 1922.

EXCELLENCY,—I have the honour to lay before you certain important considerations with respect to a possible co-operation on the part of British and American authorities with regard to the smuggling of liquor. The authorities of the United States charged with the duty of enforcing the law of this country with respect to this matter are confronted by serious difficulties which they feel might be effectively met with the assistance of British authorities in British territories, which it appears are made bases of operations in flagrant violation of constitutional and statutory provisions of the United States. It is understood that the importation of intoxicating liquors into the Canadian provinces of Nova Scotia, Manitoba, Saskatchewan and Alberta, is also prohibited by law.

I venture to submit definite suggestions as to methods by which the existing extremely unfortunate conditions might be remedied. It is believed that effective measures for this purpose might be taken by a careful supervision of the issuance of registries to vessels suspected of being engaged in illegal traffic and of the issuance of clearance papers for such vessels, and by an international arrangement between the United States and Great Britain under which the authorities of each nation would be authorized to exercise beyond the three-mile limit of territorial waters a measure of control over vessels belonging to the other.

It has been found that many of the ships engaged in the illegal smuggling of liquor into the United States are registered under the British flag and that large quantities of liquor

are carried by such vessels from the Bahama Islands and from Bermuda. It appears that, in order to evade the customs officers and prohibition agents of the United States, the persons engaged in this illicit traffic of smuggling liquor into the United States from the Bahama Islands have adopted the practice of packing the liquor so that it can be easily taken ashore in the United States. Liquor is placed in triangular-shaped packages consisting of six bottles carefully sewed in burlap, so that it can very easily be unloaded, and even a small ship can carry a very large consignment in a comparatively small hold space. Liquor is carried on both large and small ships; schooners carry cargoes out to sea from Nassau and unload them off the coast of the United States, and smaller boats carry their cargoes to Bimini and Gun Key, and from these places it is transported to West Palm Beach, Daytona, and Fort Lauderdale. A list of vessels said to be plying between the United States and the Bahamas is herewith enclosed.

This department's attention has been drawn to the ease with which it seems vessels of American registry are transferred to British registry for the purpose of preventing the authorities of the United States from taking the necessary steps to thwart these smuggling operations. It is understood that British laws require that vessels to be entitled to British registry must be owned by British subjects. Apparently reliable information indicates that American citizens of questionable reputation who are known to be engaged in the smuggling business have succeeded in obtaining British registry at the Bahama Islands for a large number of American vessels by means of the execution of paper transfers purporting to convey title to vessels to British subjects in the Bahamas, although the actual interest in the vessels continues to vest in American citizens.

Reference may be made in this connection to the fact that, under the laws of the United States relating to the transfer of registry, it is necessary for the owner of an American vessel to obtain a certificate from the United States Shipping Board showing that the vessel has first been tendered to the Board before the privilege of transferring it to a foreign register can be obtained. It would be of great assistance to this Government in combating the illicit traffic in liquors if authorities at Bermuda and in the Bahama Islands should refuse the privi-

lege of registry to American vessels unless a certificate from the United States Shipping Board is produced showing that the vessel has first been tendered to it. It is understood that for some time British laws have imposed restrictions necessitating some form of acquiescence of British authorities to the transfer of registry. It would seem that laws of this character can not well be effectively administered unless the authorities of one nation are disposed to take cognizance of the legislation of another nation.

There is information before the department indicating that the authorities at the Bahama Islands have in many cases issued two sets of clearance papers to ships which have taken on board cargoes of liquor. It is said that persons engaged in this traffic have openly made the statement that they have no trouble in obtaining from the Bahama's customs officials one set of clearance papers for a cargo of liquor declared to be destined for Halifax, Tampico or St. Pierre, and other clearance papers issued "in ballast" for an American port. This procedure is adopted by the liquor smugglers so that the ship may come within unloading distance of American shores, and if caught with a cargo of liquor on board the master can exhibit the clearance to Mexico or Canada; if the ship has succeeded in unloading the cargo on the shore without being captured, it proceeds into an American port with the second clearance papers.

In this connection I beg to quote for your information three paragraphs from an affidavit executed by a federal prohibition agent of this Government with respect to the proposal declared to have been made to him by Mr. M. Cole, who signs clearance papers for the Comptroller of Customs for the British Government at Nassau, Bahamas, concerning the issuance of two sets of clearance papers for liquor ships:

"That deponent asked Mr. Cole how the liquor runners arranged their clearance papers and if it was possible to get an extra set of clearance papers. Mr. Cole said 'Just a minute' and then went to the other side of the room and motioned deponent to come over which deponent did, Mr. Cole then stated substantially as follows:

"That 'there are a number of ways to handle it but the best and simplest way we find is, first to give you clearance



papers with your liquor, then in an hour or so come back and state that you had discharged your cargo of liquor on the high seas and then we will give you another set of papers for "in ballast" for any American Port.' Mr. Cole explained that the first set of papers referred to would be for a Foreign Port and that if you were searched they could not touch you and that after you had discharged your cargo of liquor you could enter the American Port with your papers showing 'in ballast.'

"Deponent states further that Mr. Cole did not say that there would be any money required outside the regular fees but intimated that he and the boys expected to be taken care of."

While existing nefarious practices might be largely stopped by appropriate precautionary measures with respect to the issuance of British registries to vessels engaged in smuggling and with respect to the issuance of clearance papers to such vessels, the situation with which the authorities of this Government are confronted has become so serious that this Government feels prompted to inquire whether your Government would be disposed to enter into a treaty for the purpose of checking the illegal practices in question. Such a treaty might contain reciprocal provisions authorizing the authorities of each Government to exercise a right of search of vessels of the other beyond the three-mile limit of territorial waters to the extent of twelve miles from the shore. It would appear that no inconvenience would be experienced as a result of the exercise of such a right by vessels engaged in legitimate trade between Nassau and Halifax. It is evidently natural for such vessels to take a direct route to Hatteras and then a direct course to Diamond Shoal Lighthouse and from thence to Halifax. Apparently this course brings vessels at no point within four leagues of the American shore. I shall be glad if you will bring the contents of this communication to the attention of your Government, which I have no doubt will appreciate the serious considerations which prompt the request that the matters therein presented receive earnest consideration at the earliest convenient time.

Accept, (etc.)

CHARLES E. HUGHES.

2. NOTE FROM THE BRITISH AMBASSADOR TO THE SECRETARY OF  
STATE

*(Reprinted from Press Release of February 20, 1927)*

BRITISH EMBASSY, October 13, 1922

No. 781.

SIR,—Mr. Chilton duly forwarded to His Majesty's Government copy of your note of June 26 last in which certain suggestions were made for co-operation between the British and United States authorities with the object of restricting the smuggling of alcoholic liquor into the United States.

I am now directed to inform you that His Majesty's Government have naturally been desirous of preventing, by every means within their power, any breaches of the law in the Bahamas or elsewhere in the British West Indies by persons engaged in illicit trade with the United States, and the proposals made by the United States Government with this object have received the most sympathetic consideration. With the object of preventing the development of illegal practices in connection with this traffic instructions had, in fact, some months before the receipt of the representations made by the United States Government, been sent to the Governor of the Bahamas, who was at that time requested to see that no irregularities of any kind should be permitted in connection with vessels clearing from that colony, and that the formalities required in connection with such clearances should be most strictly enforced. Instructions have also been given to the local Registrars of Shipping which will, it is anticipated, have the effect of preventing any future transfers of United States vessels to the British flag until a complete investigation of the circumstances can be made. Investigations, which it is hoped will shortly be concluded, are being made into the position and proceedings of the vessels, a list of which was enclosed in your note of June 26.

In dealing with the precautions to be taken to control transfers from the United States to the British flag, the suggestion that, in such cases, the local Registrar of Shipping should require the production of a certificate from the United States Shipping Board has been carefully examined. It has been found that there would be great difficulties in the adoption on British territory of such a requirement, and it would be still more difficult to

give such a requirement the force of law. With a view, however, to meeting the wishes of the United States Government on this point as far as is practicable, instructions have been given to the Registrar of Shipping at Nassau to the effect that, in transfer cases in which any possible doubt exists as to the *bona fides* of the parties to the transaction, the non-production of the Shipping Board certificate should be taken as a ground of suspicion, involving reference of the case to the Board of Trade in London for further directions. The delay necessitated by this procedure would, it is hoped, be in itself sufficient to reduce to a minimum the danger of transfers being successfully effected in improper cases. It may be added that if, in spite of the precautions taken, a fictitious owner secures registry and there is reason to believe that his title is open to question, an enquiry may be instituted under Section 51 of the Merchant Shipping Act, 1906, and if, as a result of these proceedings, it becomes clear that the transaction was fraudulent, the ship is subject to forfeiture. Proceedings under this section of the Act had in fact already been instituted in some cases, and the possibility of instituting similar proceedings in the case of some of the vessels referred to in the note from the State Department is being examined.

His Majesty's Government had thus taken steps even before the receipt of representations from the United States Government to prevent the practices, to which attention has now been drawn. They have now, as already indicated, issued supplementary instructions in the matter, and hope that the measures taken will prove successful in preventing any breaches of the local law. They feel, however, more difficulty in accepting the proposal that a treaty should be made authorizing the authorities of each government to exercise a right of search of vessels of the other beyond the three-mile limit of territorial waters up to a distance of twelve miles from the shore. His Majesty's Government have consistently opposed any extension of the limit of territorial waters such as that now suggested. They feel that the outbreak of smuggling which has led to the proposal can not be regarded as a permanent condition, but as one which will no doubt be suppressed by the United States authorities within the not distant future. While, therefore, they are desirous of assisting the United States Government to the best of their ability in the suppression of the traffic and in the

prevention of the abuse of the British flag by those engaged in it, they do not feel that they can properly acquiesce, in order to meet a temporary emergency, in the abandonment of a principle to which they attach great importance.

In communicating the above to you I am directed to add that while His Majesty's Government are, as already indicated, unable to acquiesce in the proposed treaty for the extension of territorial waters, they are nevertheless most desirous of taking any steps within their power to prevent any infractions of the local law by persons engaged in liquor smuggling.

I have (etc.)

A. C. GEDDES.

3. DRAFT TREATY HANDED TO THE BRITISH CHARGÉ D'AFFAIRES  
BY THE SECRETARY OF STATE, ON THE 11TH JUNE, 1923

*Article 1.*—The High Contracting Parties without attempting to extend as between themselves the limits of their respective territorial waters adjacent to the high seas, agree that the authorities of either High Contracting Party may, within the distance of twelve geographical miles from its coasts, board the private vessels of the other and make enquiry of the masters thereof as to whether such vessels or the person or persons controlling them are engaged in any attempt, either with or without the co-operation of other vessels, or persons on board the same, to violate the laws of the High Contracting Party making the inquiry, and prohibiting or regulating the unlading near, or importation into its territories of any articles.

An officer of one High Contracting Party boarding a private vessel of the other may examine the manifest of the vessel and make inquiry of the master with respect to the cargo and destination thereof. If such officer has reason to believe from the statements of the master or from documents exhibited by him or otherwise, that the vessel or the person or persons controlling it either with or without the co-operation of other vessels, or persons on board the same, is or are engaged in the wilful commission of acts which constitute a violation of the laws of the State of which such boarding officer is an official, with respect



to the unlading or importation of any article or articles he shall impart his belief to the master of the vessel, and thereupon may with the aid of the master, institute a search of the vessel and an examination of any articles on board. The search shall be conducted with the courtesy and consideration which ought to be observed between friendly nations. If there is reasonable cause for belief that the vessel or the person or persons controlling it is or are wilfully engaged with or without the co-operation of other vessels or persons on board the same, in the commission of acts which constitute a violation of the laws of the State whose officer has conducted the search, forbidding or regulating the unlading near, or importation into its territories of any article or articles, the vessel, cargo and the person or persons controlling it or them may be seized and brought in for an adjudication, and subjected to the imposition of the penalties established by law by the Party whose laws and regulations are found to have been violated.

*Article II.*—Any article or articles the importation of which into the territories of either High Contracting Party is or are for any purposes prohibited by its laws, but which is or are listed as sea stores, or as cargo destined for a port foreign to either High Contracting Party, on board a private vessel of either High Contracting Party destined for a port of the other High Contracting Party may be brought within the territorial waters of such other High Contracting Party on condition that upon arrival of the vessel so destined within twelve geographical miles of the coasts of such High Contracting Party whose territorial waters are about to be entered, such article or articles may be placed under seal by the appropriate officer of that Party and shall be kept sealed continuously thereafter until the vessel enters and during the entire stay of the vessel within those waters, and no part of such article or articles shall, during that period, be removed from under seal for any purposes whatsoever. Upon the departure of the vessel from such territorial waters destined for a foreign port, such article or articles under seal may be released therefrom either by an officer of the vessel or by an officer of the Party affixing the seal.

4. AIDE MEMOIRE FROM THE BRITISH CHARGÉ D'AFFAIRES TO  
THE SECRETARY OF STATE, DATED JULY 14, 1923

His Britannic Majesty's Chargé d'Affaires has received a telegraphic communication from His Majesty's Principal Secretary of State for Foreign Affairs pointing out that theoretically the international validity of the three-mile limit would be strengthened by the conclusion of a treaty making an exception for a special purpose. Practically, however, such a treaty would weaken the principle because it would form a precedent for the conclusion of further similar treaties until finally the principle would become a dead letter. For this reason Lord Curzon felt bound to state when questioned in Parliament that His Majesty's Government could not accept the proposal of the Secretary of State of the United States.

In the opinion of Lord Curzon, Mr. Hughes' proposed treaty would not provide for any immediate remedy for the present difficulties, seeing that it could not be ratified until Congress meets, when an amendment to the Volstead Act could equally well be introduced if the United States Government so desired. Moreover, even if the twelve-mile limit were accepted, cases would inevitably occur liable to cause serious friction between two countries, owing to the difficulty of deciding with any certainty the position of a limit usually out of sight of land, at any rate on the Atlantic coast.

Lord Curzon adds that the Hovering Acts in the United Kingdom were entirely superseded by the Customs Consolidation Act, 1876, by which British municipal legislation is made to conform with international law.

---

5. NOTE FROM THE SECRETARY OF STATE TO THE BRITISH CHARGÉ  
D'AFFAIRES

*(Reprinted from Press Release of February 20, 1927)*

DEPARTMENT OF STATE,

WASHINGTON, July 19, 1923.

The Secretary of State presents his compliments to the Chargé d'Affaires ad interim of Great Britain and acknowledges the receipt of the memorandum, under date of the fourteenth

instant, expressing the views of His Majesty's Principal Secretary of State for Foreign Affairs, with respect to the proposed treaty relating to visit and search of vessels within twelve miles of the coasts of the parties, respectively, for the purpose of preventing the illegal introduction of articles into their territories, and also relating to the carriage, within territorial waters of certain sealed stores and cargo destined for foreign ports.

Preliminarily, it should be observed that a draft treaty was submitted informally, simply for the purpose of avoiding misunderstanding and of making a concrete suggestion which could form the basis of discussion. It should also be said that it was not the purpose of the Secretary of State to propose an extension of the limits of territorial waters, and the draft proposal specifically negatived such an intention.

It is noted that Lord Curzon points out that the theory of the international validity of the three-mile limit would be strengthened by the conclusion of a treaty making an exception for a special purpose, but that he is of the opinion that such a treaty would weaken the principle because it would form a precedent, the following of which would ultimately deprive the principle of force. It is not perceived that this would be the result as no Power would be under obligation to make any other agreements unless it saw fit to do so, or to treat the special agreement as a precedent except in a case precisely analogous, and there could be inserted in the special agreement any statement or qualification that might be deemed to be advisable to show that it was definitely limited to the particular situation in view.

In relation to Lord Curzon's further suggestion, it may be stated that while the proposed treaty could not be ratified until the Senate convenes, and while the Secretary of State is not in a position to give an assurance either with respect to the action of the Senate, or with regard to the prospect of securing from Congress an amendment to the Volstead Act in relation to ship liquor and cargo liquor destined for foreign ports, it is believed that the solution of the present difficulty through the making of a fair and reasonable agreement, such as is proposed, would be the most promising method of securing early action. Therefore, Mr. Hughes trusts that the suggestion will not be put aside upon the supposition that another course is equally feasible.

With respect to Lord Curzon's suggestion that even if the twelve-mile limit were accepted, cases would inevitably occur liable to cause serious friction between the two countries owing to the difficulty of deciding with any certainty the position of a vessel usually out of sight of land, at any rate on the Atlantic coast, it is believed by this Government that the proposed special agreement would do much to reduce, if indeed it would not wholly eliminate, the causes of friction due to the present efforts to evade the laws of the United States. In this connection, it must be emphasized that the proposed agreement would not interfere with British vessels engaged in legitimate commerce and bound for American ports. Such vessels will necessarily come not only within twelve miles but within three miles of the American coast and will hence in any event be subject to examination by American authorities and will, of course, comply with the applicable laws of the United States. The proposed special agreement would bear only upon those vessels which come within twelve miles but hover off the three-mile limit for the purpose of aiding in the smuggling of intoxicating liquor, or other prohibited articles, into the territory of the United States.

It is impossible for this Government not to take all proper and lawful measures to prevent this illicit traffic from being carried on. An illustration is afforded by the case of the schooner *Henry L. Marshall*, the conduct of which recently came under the scrutiny of the United States Circuit Court of Appeals for the Second Circuit, as stated in the memorandum of the Secretary of State delivered to the British Embassy on the sixteenth instant. While it is understood that this vessel is not regarded as a British vessel, for the reason which His Majesty's Government has stated, reference may be made to the practice of the vessel as showing the conditions with which the American Government is required to deal. The vessel did not come within the three-mile limit, but she made her arrangements for the carriage of her illicit cargo to the shore of the United States in violation of its laws, and, as the court found, while the unloading was begun outside the three-mile limit, it was continued within the territorial waters of the United States, and the vessel was engaged contrary to the laws of the United States in introducing her cargo of intoxicating liquors within the commerce of the United States.



This Government has already expressed the hope that the British Government will interpose no obstacles in such cases to the enforcement of the laws of the United States, but it is believed that an appropriate agreement which would not injure bona fide trade but would facilitate the enforcement of the laws of the United States in preventing the smuggling of liquor would remove occasions for misunderstanding and eliminate the serious friction to which the memorandum under consideration refers.

It may confidently be asserted that there would be no disposition on the part of the American authorities, and the special agreement would not justify any attempt, to seize a British vessel, save within the limits proposed, and when it was clear that the vessel concerned was directly involved in an attempt to introduce its illicit cargo into the territory of the United States. British vessels bound for the ports of the United States would encounter no additional obstacles to their trade, and vessels destined for foreign ports, which happened to pass on legitimate errands within twelve miles of the American coast, would suffer no inconvenience, while such vessels as were engaged in the unlawful conduct above described would not be able to create difficulties between the two countries, much less serious friction, by attempts to secure immunity for their operations by invoking the protection of the British flag.

Although the Government of the United States regards the proposed agreement as an appropriate setting forth of the proposal, it would cordially welcome the co-operation of the British Government in moulding the form of an arrangement which would reasonably serve a purpose which, it is firmly believed, may be found to be common to both countries.

---

6. NOTE FROM THE BRITISH CHARGÉ D'AFFAIRES TO THE ACTING  
SECRETARY OF STATE

*(Reprinted from Press Release of February 20, 1927)*

BRITISH EMBASSY,

WASHINGTON, September 17, 1923.

No. 797.

SIR,—With reference to the note verbale which the Secretary of State addressed to me on July 19th last, I have the honour to inform you, by instruction of His Majesty's Principal Secre-

tary of State for Foreign Affairs, that Lord Curzon has had under careful consideration, in consultation with the other departments of His Majesty's Government concerned, Mr. Hughes's proposals for an extension of territorial jurisdiction in connection with the liquor traffic from the ordinary three-mile limit of territorial waters to a distance of twelve miles from the coast, as embodied in the draft treaty handed to me by the Secretary of State on June 11th last.

The object of the United States Government in making these proposals is to secure the right to search and arrest ships from which spirituous liquors are sold just outside the present limit of territorial jurisdiction. The extent of this traffic seems, however, to His Majesty's Government to have been exaggerated, judging from the following statement published by Mr. Haynes, the United States Prohibition Commissioner, in the *New York Times* of July 18th last.

"The moonshine-still is the bootlegger's chief source of supply. From what other place can he get his liquor in quantity? Surely not from the rigidly controlled bonded warehouses—they are eliminated at once. As to smuggled liquor, some it is true is brought into the country, but not one-tenth as much as the illegal traffic would have us believe.

"When reports of huge smuggling operations are circulated it should be remembered that the illicit liquor interests are conducting a great and elaborate propaganda campaign to discredit law enforcement and that the spreading of such reports is part and parcel of that campaign. No bootlegger, of course, is willing to admit that he can obtain only adulterated moonshine. Hence, fanciful tales of the wet wave sweeping in on our coasts and other related falsehoods pass from mouth to mouth to hide the real and dangerous origin of what the bootlegger has to sell."

In face of this authoritative pronouncement Lord Curzon feels additional hesitation in accepting proposals which, with all due respect to Mr. Hughes, cannot, in Lord Curzon's opinion, fail to weaken the authority of the general rule of international law, whereby three miles is regarded as the limit of territorial jurisdiction. Moreover, the Atlantic coast line of the United States, except the small part between Portland (Maine) and the Bay of Fundy, is so low that it is not as a rule visible twelve

miles out at sea; the difficulty of deciding the exact position of the proposed new limit would in consequence be much increased, and there would be a constant risk of disputes arising between the two countries whenever a British ship was boarded or arrested by the United States preventive service, on or near the new line. In this connection Lord Curzon would observe that the ancient British Hovering Acts were modified in 1876 to bring them into harmony with the principles of international law, and His Majesty's Government cannot admit that the municipal legislation of any country can override those principles.

No spirituous liquors are cleared direct from the United Kingdom to United States ports and so far as British subjects are concerned, there is no violation of any law, British or international, in the sale of such liquors on the high seas to purchasers of any nationality; therefore there is no obligation upon His Majesty's Government to interfere with the prosecution of a perfectly legitimate trade. Nevertheless the whole question has been carefully examined with an earnest desire to afford the United States Government any proper assistance in the difficulties which they are encountering in the enforcement of the Volstead Act. In this spirit legislation was considered with a view to prohibiting the export of spirituous liquors to destinations adjacent to the United States except under licence or to rendering illegal the discharge of such liquors at ports other than those to which they were originally consigned. It became apparent, however, that such legislation would necessitate and could indeed only be made effective by rationing supplies not merely to countries adjacent to the United States, but to all countries for which purpose powers would be required similar to those exercised for the control of trade during the war. The United States Government will probably agree that His Majesty's Government could hardly be expected to revive such powers, seeing that the United States Government themselves (in March, 1920) explained their inability to ratify the convention for the control of the arms traffic on the very ground that they were not prepared to revive the war regulations by which alone a private trade could be regulated.

Assuming, however, that measures could be devised for stopping the export from the United Kingdom of spirituous

liquors which might ultimately reach the United States and that all other countries were prepared to take similar action so that the traffic would not merely be diverted into other channels, His Majesty's Government would still feel great hesitation in proposing such measures to Parliament so long as British ships are prevented from carrying liquor under seal in transit through United States waters. As far as His Majesty's Government are aware, it has never been alleged that any liquor at all has made its way into the United States from the stores of British ships calling at United States ports, so that this restriction, besides constituting in effect an interference with the liberty of British ships on the high seas, appears to be entirely superfluous.

His Majesty's Government do not deny the strictly legal right of the United States or any other country to impose its jurisdiction on all ships whether national or foreign within its territorial waters. His Majesty's Government themselves claim that right and it is even the case that some of the provisions of the British Merchant Shipping Acts are such that ships visiting ports in the United Kingdom must comply with them before entering and after leaving the jurisdiction. These provisions, however, relate solely to the safety and welfare of the ship, crew and passengers. Similar provisions exist in the legislation of the United States and other countries and they are generally recognized as reasonable.

It is, however, equally well recognized that the circumstances of ships, travelling as they do from port to port in many different countries, are peculiar and that to subject them to all the different and often conflicting requirements of the various jurisdictions which they may enter, would create an impossible situation. Consequently, as a matter of international comity and practice, the maritime Powers refrain from imposing their jurisdiction on foreign ships except for the purposes stated above, namely the safety and welfare of the ships, crews and passengers. The principle was well stated in the dispatch of October 28, 1852, from Mr. Conrad, when Acting Secretary of State, to the United States minister at Madrid, wherein he writes:—

“You will state that this government does not question the right of every nation to prescribe the conditions on which the vessels of other nations may be admitted into her



ports. That nevertheless those conditions ought not to conflict with the received usages which regulate the commercial intercourse between civilized nations. That those usages are well known and long established and no nation can disregard them without giving just cause of complaint to all other nations whose interests would be affected by their violation."

The United States Government have indeed given recent proof of their fidelity to the same principle, in exempting ships trading between the United States and Italy from the strict application of the Volstead Act, on the ground that Italian law requires the provision of a certain amount of liquor on such ships.

In informing you of the above I am directed to express the earnest hope that means may be found to modify the present application of the Volstead Act to British ships, and thus to remedy what is, in effect, an unwarrantable interference with the domestic concerns of British ships on the high seas.

I am to add that in view of the difficulties of the case His Majesty's Government could not agree to an extension of the three-mile limit, even for a limited purpose, until the matter has been submitted to the Imperial Conference, which will meet within a few weeks in London.

I have (etc.)

H. G. CHILTON.

7. NOTE FROM THE BRITISH CHARGÉ D'AFFAIRES TO THE  
SECRETARY OF STATE

BRITISH EMBASSY,  
WASHINGTON, D.C., October 29, 1923.

No. 921.

*Immediate*

SIR,—In view of the press report from New York published in the London papers of the 27th instant that Great Britain has accepted in principle your proposal for establishing a twelve-mile limit for the purpose of extending the right of search, I am instructed by His Majesty's Principal Secretary of State for Foreign Affairs to inform you as follows.

The Imperial Conference have appointed a special committee to consider the question of prohibition and liquor smuggling through United States territorial waters. While His Majesty's Government are in entire agreement with the United States Government as to the undesirability of any alteration of the general rule whereby territorial waters extend to three miles only from low water mark, it is hoped that on the conclusion of the Imperial Conference's consideration of the circumstances now existing outside of United States territorial waters, His Majesty's Government will be in a position to make a definite proposal to the United States Government generally favourable to their interest in the suppression of the liquor traffic. As a matter of fact, however, the Committee have not yet reported to the Imperial Conference; and any statements such as those which have been telegraphed from New York are both inaccurate and premature.

I have the honour to be,  
 with the highest consideration, sir,  
 Your most obedient,  
 humble servant,

H. G. CHILTON.

The Honourable CHARLES E. HUGHES,  
 Secretary of State of the United States,  
 Washington, D.C.

---

8. NOTE FROM THE SECRETARY OF STATE TO THE BRITISH CHARGÉ  
 D'AFFAIRES

DEPARTMENT OF STATE,

WASHINGTON, November 2, 1923.

SIR,—I have the honour to acknowledge the receipt of your note No. 921, dated October 29, 1923, in which you state that the press reports from New York published in the London papers of October 27th that your Government has accepted in principle my proposal for a treaty dealing with liquor smuggling and the transportation of liquor in American territorial waters under seal are both inaccurate and premature. You state that

the Imperial Conference has appointed a special committee to consider the question of prohibition and liquor smuggling through United States territorial waters, and that it is hoped that on the conclusion of the consideration of the circumstances now existing outside of United States territorial waters, His Majesty's Government will be in a position to make a definite proposal generally favourable to the interest of this Government in the suppression of the liquor traffic.

I shall await with interest the receipt of the proposals generally favourable to the interest of the United States in the suppression of the liquor traffic which you state your Government may be in a position to submit.

Accept, Sir, the renewed assurances of my high consideration.

CHARLES E. HUGHES.

Mr. HENRY GETTY CHILTON,

Chargé d'Affaires ad interim of Great Britain.

9. NOTE FROM THE BRITISH CHARGÉ D'AFFAIRES TO THE  
SECRETARY OF STATE

BRITISH EMBASSY,

No. 1005.

WASHINGTON, D.C., November 23, 1923.

SIR,—In my note to the Acting Secretary of State, No. 797, of September 17th, I had the honour to explain some of the serious difficulties felt by His Majesty's Government in agreeing to the proposals embodied in the draft treaty for the regulation of the liquor traffic which you handed to me on June 11th.

I informed Mr. Phillips in that note that various Departments of His Majesty's Government who would be concerned with the changes which such a treaty must necessarily bring about were engaged in exploring every avenue by which they might lend assistance to the Government of the United States in the obstacles they were encountering in the enforcement of the Volstead Act.

Further sympathetic consideration has been given to the whole matter in the meantime but I am instructed to state that the attention of His Majesty's Government has been called to

an important judgment of the Supreme Court of the United States handed down on April 23rd last, which seems to raise an additional difficulty that must be overcome before a treaty can be drafted in final form. In delivering that judgment Mr. Justice Devanter said:—

“While the construction and application of the National Prohibition Act is the ultimate matter in controversy, the Act is so closely related to the Eighteenth Amendment, to enforce which it was enacted, that a right understanding of it involves an examination and interpretation of the Amendment. The first section of the latter declares,

“Section 1. After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes is hereby prohibited.”

He then proceeded to show that the Volstead Act correctly carries out the intention of the Eighteenth Amendment, and then that the proper interpretation of the Act is that no ship, domestic or foreign, can carry liquor in transit within United States territorial waters. That is to say, such carriage of liquor appears to be not merely illegal but unconstitutional.

Lord Curzon was glad to receive and has weighed with the greatest care the communications you have been good enough to make to him both through the late United States Ambassador in London and through me regarding the constitutionality of the proposed treaty, and he has not overlooked the announcement made to the Press on November 2nd by the President of the United States to the effect that, as Congress specifically exempted from the operation of the Act liquor in transit through the Panama Canal, it thereby recognized that the right of foreign ships to transport liquor in United States waters is not prohibited by the Constitution but merely by the Act, and that the Act can be modified by a treaty. In view, however, of the great importance of this point Lord Curzon would be glad to receive information as to whether the right to carry liquor through the Panama Canal has ever been challenged on constitutional grounds and confirmed in the United States Courts.



It has been represented to him that in the absence of such confirmation the precedent set by the legislators in the Volstead Act can not be regarded as entirely conclusive.

Resolutions adopted at recent important gatherings in the United States of business men interested in the American Mercantile Marine give foundation for the belief that legal steps may be taken in the future to question the constitutional validity of the concession which the treaty proposes to grant to British ships trading with United States ports. Should that concession be so questioned and not confirmed by the Courts, His Majesty's Government would lose the privilege in return for which they are asked to make a very important concession in relation to the right of arrest and search.

As at present advised it appears to Lord Curzon impossible to proceed with the treaty or any similar arrangement until His Majesty's Government have been favoured with authoritative assurances on this point by the Government of the United States.

I have the honour to be,  
with the highest consideration, sir,  
Your most obedient, humble servant,

H. G. CHILTON.

The Honourable CHARLES E. HUGHES,  
Secretary of State of the United States,  
Washington, D.C.

---

10. NOTE FROM THE SECRETARY OF STATE TO THE BRITISH  
CHARGÉ D'AFFAIRES

DEPARTMENT OF STATE,

WASHINGTON, November 26, 1923.

SIR,—I have the honour to acknowledge the receipt of your note, No. 1005, of November 23, 1923, and I am gratified to observe the sympathetic consideration that His Majesty's Government is giving to the proposals embodied in the draft treaty.

It is hardly necessary to say that in these proposals there has been no intention to violate in any respect the provisions of the Eighteenth Amendment of the Federal Constitution. On the contrary, the purpose is to aid their enforcement.

In the case of the *Cunard Steamship Company, Ltd. et al v. Mellon, Secretary of the Treasury, et al* (decided April 30, 1923), to which you refer, the question of the validity of an Act of Congress, or a treaty, excepting from penalty or forfeiture intoxicating liquor carried as cargo or sealed stores not destined for delivery or consumption within the territory of the United States, but carried under seal while in transit through territorial waters, was not involved, and that decision cannot be regarded as determining that question. In that case it was held that Congress, acting within its authority, had actually imposed penalties upon such carriage, and an injunction restraining the officers of the Government from proceeding against the complaining steamship companies and their ships, under the Act of Congress as thus construed, was denied.

While the precise question raised in your note has not been decided, there are certain applicable principles which are deemed to be controlling. The Eighteenth Amendment provides:—

I. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

II. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

It is apparent that the first section provides no penalties and that these are left to appropriate legislation. As the Supreme Court of the United States has recognized, a constitutional provision "is self-executing only so far as it is susceptible of execution". (*Davis v. Burke*, 179 U.S. 399, 403). As no penalties or forfeitures are prescribed in the Eighteenth Amendment itself, and Congress is empowered to enforce that Amendment by appropriate legislation, it is manifest that to the sound discretion of Congress is confided the determination of what are appropriate penalties and forfeitures. In the judg-

ment of this Government there is no reason to doubt that in the exercise of this authority Congress may consider all the pertinent circumstances and the best means of enforcing the constitutional provision, and may thus consider it entirely appropriate not to impose penalties or forfeitures with respect to intoxicating liquor which is not destined for consumption or delivery within the United States but is simply carried in transit through territorial waters.

The authority which is thus deemed to be possessed by Congress has already been exercised with respect to the transit of intoxicating liquors through the Panama Canal. There is a special provision in the Volstead Act dealing with the Canal Zone which excepts "liquor in transit through the Panama Canal or on the Panama Railroad." It is true that the validity of this exception has not been the subject of precise adjudication, but it is believed to have been fully recognized by the Supreme Court in the decision which you have cited in your note. The Supreme Court there said:—

"Much has been said at the bar and in the briefs about the Canal Zone exception, and various deductions are sought to be drawn from it respecting the applicability of the Act elsewhere. Of course the exception shows that Congress, for reasons appealing to its judgment, has refrained from attaching any penalty or forfeiture to the transportation of liquor while 'in transit through the Panama Canal or on the Panama Railroad.' Beyond this it has no bearing here, save as it serves to show that where in other provisions no exception is made in respect of merchant ships, either domestic or foreign, within the waters of the United States, none is intended.

"Examining the Act as a whole, we think it shows very plainly, first, that it is intended to be operative throughout the territorial limits of the United States, with the single exception stated in the Canal Zone provision; secondly, that it is not intended to apply to domestic vessels when outside the territorial waters of the United States, and, thirdly, that it is intended to apply to all merchant vessels, whether foreign or domestic, when within those waters, save as the Panama Canal Zone exception provides otherwise."

It will be observed that the exception is not criticized nor is it said to lie beyond the power of Congress, but it is stated that

the exception shows "that Congress, for reasons appealing to its judgment, has refrained from attaching any penalty or forfeiture" to the transportation described.

It is the view of this Government that Congress has the same authority to except from penalties or forfeitures intoxicating liquor in transit through territorial waters not destined for delivery or consumption within the United States that it has to except from penalty or forfeiture intoxicating liquor in transit through the Panama Canal. Moreover, if Congress made such an exception, it is manifest that there would be no penalty or forfeiture attaching to such transit.

It is also the view of this Government that as the Constitution does not deal with penalties or forfeitures, and these remain within the law-making power, this subject cannot be regarded as withdrawn from the treaty-making power. The treaty-making power is deemed to be quite as broad in this respect as the legislative power. As was said by the Supreme Court of the United States in the case of *Missouri v. Holland*, 252 U.S. 416, 433:—

"Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of the United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found."

You will not fail to observe that the part of the proposed treaty above mentioned relates only to exception from penalties and forfeitures in the particular circumstances described in the treaty and that the treaty as a whole is clearly intended to secure the better enforcement of the Eighteenth Amendment by facilitating measures to prevent the operations which have seriously interfered with that enforcement. The provisions with



respect to arrest and search are to be considered in connection with the exception from penalty or forfeiture in case of liquors merely in transit. I have, therefore, no hesitation in saying that while this Government is clearly of the opinion that the proposed treaty would have constitutional validity, there would be no attempt on the part of this Government to insist upon the provisions as to arrest and search in opposition to the desire of His Majesty's Government to abrogate the treaty in case the proposed exception from penalty and forfeiture should either by final judicial decision or by Act of Congress become inoperative. Such abrogation would, of course, not be deemed to impair any rights possessed by this Government irrespective of the treaty.

Accept, sir, the renewed assurance of my high consideration.

CHARLES E. HUGHES.

---

11. DRAFT TREATY HANDED TO THE SECRETARY OF STATE BY  
THE BRITISH CHARGÉ D'AFFAIRES, ON THE 3RD DECEMBER,  
1923

1. The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles measured from low water mark constitute the proper limits of territorial waters.

2. (1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States in order that inquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavouring to import or have imported alcoholic beverages into the United States in violation of the laws in force in that country. When such inquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offence against the laws of the United States prohibiting the

importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States than can be traversed in one hour by the vessel suspected of endeavouring to commit the offence. In cases however in which the liquor is intended to be conveyed to the United States by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

3. The United States agrees to allow British vessels voyaging to or from the ports or passing through the waters of the United States to have on board alcoholic liquors listed as sea stores or as cargo destined for a foreign port, provided that such liquor is kept under seal while within the jurisdiction of the United States.

4. Any claim by a British vessel for compensation on the ground that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by Article 2 of this treaty or on the ground that it has not been given the benefit of Article 3 shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the High Contracting Parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Claims Commission established under the provisions of the Agreement for Settlement of Outstanding Pecuniary Claims signed at Washington on August 18, 1910, but the claim shall not, before submission to the Tribunal, require to be included in a schedule of claims confirmed in the manner therein provided.

5. This treaty shall be subject to ratification and shall remain in force for a period of one year from the date of the exchange of ratifications.

Three months before the expiration of the said period of one year, either of the High Contracting Parties may give notice of its desire to propose modifications in the terms of the treaty.

If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the treaty shall lapse.

If no notice is given on either side of the desire to propose modifications, the treaty shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the treaty, and to the provision that if such modifications are not agreed upon before the close of the period of one year, the treaty shall lapse.

6. In the event of either of the High Contracting Parties being prevented by difficulties of a constitutional nature from giving full effect to the provisions of the present treaty, the said treaty shall automatically lapse.

---

12. AIDE-MEMOIRE FROM THE SECRETARY OF STATE TO THE  
BRITISH CHARGÉ D'AFFAIRES

DEPARTMENT OF STATE,  
WASHINGTON, December 7, 1923.

The Secretary of State has carefully considered the draft proposed by His Majesty's Government of the treaty relating to alcoholic liquors. While the Government of the United States would have preferred that the distance for the purposes of search and seizure be more definitely delimited, it has been concluded, in view of the evident desire of the British Government to attain the object in view and of the importance of an early disposition of the matter, not to raise objections to the provisions contained in Articles 2, 4 and 5 of this draft, save to add the words, "its territories or possessions" after the words "United States" in Article 2.

There are, however, certain modifications in the other articles which are deemed to be important.

*Article 1*

In order to avoid a detailed statement with respect to ports, bays, harbours, et cetera, it is desired that in Article 1 after the words "three marine miles" there should be inserted the words

“extending from the coast line outward and,” so that Article 1 shall read as follows:—

1. The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coast line outward and measured from low water mark constitute the proper limits of territorial waters.

### *Article 3*

In the communication addressed by the Secretary of State to the British Chargé d’Affaires ad interim under date of November 26, 1923, the question of the constitutional validity of the proposed treaty was considered and it was pointed out that the law-making power of Congress and the treaty-making power were deemed to extend under the Eighteenth Amendment of the Federal Constitution to the determination of penalties or forfeitures and such exceptions thereto as might be deemed to be appropriate in view of all the pertinent circumstances and after consideration of the best means of enforcing the constitutional provision. It is important, however, that the provision of the treaty upon this point should clearly reflect this view and should relate to an exception from penalties and forfeitures. To leave no room for question as to the intent, it is deemed advisable to refer to the existing exception in the case of transit through the Panama Canal. For these reasons the Government of the United States proposes that Article 3 of the proposed treaty shall be amended to read as follows:—

3. No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors, or to vessels or persons by reason of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions on board British vessels voyaging to or from ports of the United States or its territories or possessions, or passing through the territorial waters thereof, and such transit through such waters shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried



remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

### *Article 6*

While the Government of the United States would have preferred that the treaty should be subject to denouncement in the event under consideration, it is understood that His Majesty's Government strongly desire not to have a provision for denouncement but instead to have a provision for the automatic lapsing of the treaty in the event described. The Government of the United States will not oppose this view; but it is deemed that there should be a modification of the text of the proposed article in the following particulars. The expression "difficulties of a constitutional nature" is thought to be too indefinite. Such difficulties, if they arose, would be presented by a judicial decision upon the question and it is desired that the reference should be not to "constitutional difficulties" but to "judicial decision" which would prevent giving full effect to the provisions of the treaty. Moreover, there is also the question of legislation subsequently enacted by Congress and this contingency, while deemed to be remote, should be covered by the article. It is also desired to have a specific statement as to the full retention of rights on the termination of the treaty. For these reasons it is proposed that Article 6 shall read as follows:—

6. In the event that either of the High Contracting Parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present treaty, the said treaty shall automatically lapse, and, on such lapse or whenever this treaty shall cease to be in force, each High Contracting Party shall enjoy all the rights which it would have possessed had this treaty not been concluded.

It is hoped that with these modifications the treaty as proposed may be concluded at an early date.

DEPARTMENT OF STATE,  
WASHINGTON.

## PART II

### International Correspondence Submitted at the Instance of the United States Government

#### 13. NOTE FROM THE BRITISH AMBASSADOR TO THE SECRETARY OF STATE

BRITISH EMBASSY,

WASHINGTON, D.C., December 6, 1922.

No. 915.

SIR,—In the note which I had the honour to address to you on October 13th last I was able to notify you of the steps which were being taken by His Majesty's Government for the purpose of restricting the smuggling of liquor into the United States by means of the fraudulent transfer of American vessels to the British registry.

I now have pleasure in informing you that the Government of Canada have intimated to His Majesty's Government their desire to co-operate in this matter. They have accordingly issued new instructions to Registrars of Shipping in Canada regarding cases where an application is made to them to register a vessel which has been purchased from a United States citizen. These instructions are to the effect that unless the application for registry is supported by a certificate under the seal of the United States Shipping Board, authorizing such transfer to British registry, all particulars in regard to the case in question must be forwarded to the competent department of the Canadian Government for instructions before any definite steps are taken for the transfer of the vessel in question.

I have the honour to be,

With the highest consideration, sir,

Your most obedient, humble servant,

A. C. GEDDES.

The Honourable CHARLES E. HUGHES,  
Secretary of State of the United States,  
Washington, D.C.

14. NOTE FROM THE BRITISH CHARGÉ D'AFFAIRES TO THE  
SECRETARY OF STATE

BRITISH EMBASSY,

WASHINGTON, D.C., July 10, 1923.

No. 578.

SIR,—I have the honour to inform you that my attention has been drawn to certain comments in the press regarding the recent decision of the United States Circuit Court of Appeal in connection with the condemnation and forfeiture of the alleged British schooner *Henry L. Marshall* for smuggling liquor into the United States in contravention of the prohibition laws. You will recollect that this vessel was seized by United States Revenue officials in July, 1921, when off the coast of New Jersey and outside the limit of United States territorial waters.

The general trend of these comments is to the effect that the view of many American legal experts that the United States Government has the right to seize rum-runners outside the three-mile limit is shared by the State Department, and it is hinted that the absence of a protest by His Majesty's Government against the condemnation of the *Henry L. Marshall* by the United States Circuit Court of Appeal not only makes the case a useful precedent for similar future action by the United States authorities outside the three-mile limit against British vessels suspected of rum-running, but also implies a change in the attitude of His Majesty's Government towards the principle of such seizures outside the three-mile limit.

In order to avoid the possibility of any misunderstanding on the part of the United States Government as to His Majesty's Government's attitude in this matter I have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to inform you that any attempt on the part of the United States authorities to seize a British ship outside the three-mile limit would be regarded by His Majesty's Government as creating a very serious situation. In regard to the *Henry L. Marshall* case, I have been instructed to explain that the absence of a protest by His Majesty's Government against the condemnation of this vessel in no way implies any alteration in the views of His Majesty's Government with regard to the principle at stake, inasmuch as that vessel, owing to the

circumstances in which she secured her British registry, was not recognized by His Majesty's Government as entitled to British registry. Consequently, His Majesty's Government have not felt called upon to assert the principle at stake on her behalf, since, as far as His Majesty's Government are concerned, the *Henry L. Marshall* remains an American vessel.

I have the honour to be, etc.

H. G. CHILTON.

Honourable CHARLES E. HUGHES,  
Secretary of State of the United States,  
Washington, D.C.

---

15. NOTE FROM THE SECRETARY OF STATE TO THE BRITISH  
CHARGÉ D'AFFAIRES

DEPARTMENT OF STATE,

WASHINGTON, July 16, 1923.

SIR,—I have the honor to acknowledge the receipt of your communication No. 578 of July 10, last, in relation to the recent decision of the United States Circuit Court of Appeals in the case of the schooner *Henry L. Marshall*, and to certain American press comments thereon. You advert to the general trend of these comments and to the inferences which are drawn from the views of many American legal experts.

I note your statement that under instructions from your Government you inform me that any attempt on the part of the United States authorities to seize a British ship outside the three-mile limit would be regarded by your Government as creating a very serious situation. With respect to the case of the *Henry L. Marshall*, you state that you have been instructed to explain that the absence of a protest by His Majesty's Government against the condemnation of the vessel in no way implies any alteration in the views of your Government with respect to the principle at stake, inasmuch as the vessel was not recognized as entitled by your Government to British registry; and you add, that so far as your Government is concerned, the *Henry L. Marshall* remains an American vessel. The Department is pleased to receive this formal statement as to the status of the



vessel as it is recalled that your Embassy had made protests against the seizure of the vessel in your communications No. 623, of August 11, 1921, and No. 686, of September 9, 1921, and that the Department had also been in receipt of communications from your Embassy in respect to the progress of the cause and the detention of certain members of the crew as witnesses.

In view of the emphasis placed in your last communication upon the principle deemed to be involved, it would seem appropriate to direct your attention to the precise import of the adjudications in the United States District Court for the Southern District of New York and, on appeal, in the United States Circuit Court of Appeals for the Second Circuit, from whose decrees it is not understood that the claimant has as yet sought by writ of certiorari to obtain a review in the Supreme Court of the United States. For this purpose I may refer to the pertinent facts as these have been judicially established and set forth in the statement of the case by the United States Circuit Court of Appeals. The vessel sailing under British registry in 1921 obtained clearance from West End, Bahama Islands, when actually laden with a cargo of intoxicating liquors. She received two clearances of the same date and signed by the same Collector of Revenue, one of which stated that she had cleared for Halifax with the cargo of liquor, the other that she had cleared for Gloucester, Massachusetts, in ballast. The same Collector furnished two bills of health, likewise differing as to destination. It was abundantly proved that the real object and only business of the *Henry L. Marshall* was to peddle liquor along the coast of the United States. "Particularly," states the official report of the decision, "did she pursue her vocation while lying some nine or ten miles off Atlantic City and there sent liquor on shore, pursuant to previous arrangement made in the United States, by motor boats", which, however, were not a part of the schooner's equipment, and, so far as appears, did not belong to her owner. When the *Marshall* was boarded more than three miles from the New Jersey coast it was found that she had no manifest and still had on board a quantity of liquor.

The United States Circuit Court of Appeals in affirming the decrees which were passed upon the libels for forfeiture, held that the act of unlading although beginning beyond the three-mile limit continued until the liquor was landed; that the

*Marshall's* cargo of whiskey was never manifested; that it was not unladen between the rising and setting of the sun and that no special licence had been obtained for unloading at night; and that there was an unloading without a permit,—all in violation of the provisions of the Revised Statutes of the United States. The United States Circuit Court of Appeals concluded: (a) that there was an attempt to introduce all of the *Marshall's* cargo into the commerce of the United States, and that there was an actual introduction of a part of that cargo into that commerce; (b) that such attempt at introduction was by means of fraudulent practices, i.e., evasion of the provisions of the National Prohibition Act; (c) that there were wilful acts (i.e., rum-running) by means whereof the United States was deprived of duties upon the merchandise (i.e., whisky) affected by the said act.

The foregoing conclusions are deemed by this Government to be self explanatory. They relate to the conduct of a vessel which was far from exercising the normal right of passage on the high seas adjacent to American waters in the course of a voyage between two British ports. They show that the vessel and those controlling it started upon its sinister voyage with connivance and aid of British authority in British territory; that its direct and single effort was by fraudulent means to introduce the cargo, and all of it, within the territory of the United States; and that the vessel prior to and at the time of its actual seizure, even though more than three miles from the shore, was hovering off the coasts of the United States and was engaged in an attempt to violate the laws of the United States by the introduction of the liquor within its territory. It should be added that adequate judicial procedure, as already noted, was available and used, in order to determine these facts, and in these circumstances the competent judicial authority of the United States has sustained the seizure of the vessel.

In view of this decision, and of the tenor of your communication, my Government hopes that it may be advised that His Majesty's Government does not consider, even in the case of a vessel admittedly of valid British registry, that such a vessel pursuing the course of conduct followed by the schooner *Henry L. Marshall* is making proper use of the British flag and that His Majesty's Government would not be disposed to espouse the cause of a British merchant vessel in an effort unlawfully

to introduce intoxicating liquors into the territory of the United States in the manner adopted by the schooner *Henry L. Marshall*, or in such a case to oppose the enforcement of the laws of the United States by means of the procedure taken in the case of that vessel and judicially approved.

Accept, Sir, the renewed assurance of my high consideration.

CHARLES E. HUGHES.

Mr. HENRY GETTY CHILTON,

Chargé d'Affaires ad interim of Great Britain.

16. NOTE FROM THE SECRETARY OF STATE TO THE BRITISH  
AMBASSADOR

DEPARTMENT OF STATE,

WASHINGTON, February 26, 1923.

EXCELLENCY,—I have the honour to refer to my informal note of November 14, 1922, stating that the British schooner *M. M. Gardner*, seized outside the three mile limit of the United States, had been released, and to state that information has been received to the effect that this vessel is owned by the British Transportation and Trading Company of Nassau, that this Company was registered on November 30, 1921, to import and export spirits, cordials, wines and liqueurs; to brew and distill, to buy, charter, and build and operate vessels, etc. I am informed that the Company's capital is £15,000 in one pound shares, one share being subscribed by each of the following directors: William Frederick McCoy, Peter Diamond, Bruce K. Thompson, Maud McCoy, and Albert Warren Gott. William Frederick McCoy, who is president of the corporation, is an American citizen, and I am informed that he is under indictment in several jurisdictions of the United States in connection with liquor smuggling operations. Maud McCoy, who is secretary and treasurer, is his wife. The Company is understood to have no actual shareholders other than Mr. McCoy except directors holding a qualifying interest.

From these statements it seems that the British Transportation and Trading Company is merely a ship-holding company, organized by Mr. William Frederick McCoy, an American citi-

zen, formerly a boat builder in Florida, and now a resident of Nassau, for the purpose of obtaining British registry for vessels in order that he may obtain the protection of the British flag for his ships which are engaged in smuggling liquor into the United States.

As you stated in your note No. 781 of October 13, 1922, that your Government was "desirous of assisting the United States Government to the best of their ability in the suppression of the traffic and in the prevention of the abuse of the British flag by those engaged in it," I am submitting these facts to you in the hope that you will be so good as to cause the operations of the British Transportation and Trading Company to be investigated and inform me whether, in case it is found that the actual interest involved is American, your Government would be disposed to take any steps to prevent the use of the British flag on ships belonging to this concern for the purpose of avoiding seizure of its vessels by the agents of the United States for violation of its laws. I shall also be grateful if you will inform me what requirements are imposed under British law upon companies applying for registration of vessels under the British flag.

Accept, Excellency, the renewed assurances of my highest consideration.

CHARLES E. HUGHES.

His Excellency

The Right Honourable

Sir AUCKLAND GEDDES, G.C.M.G., K.C.B.,  
Ambassador of Great Britain.

---

17. NOTE FROM THE BRITISH CHARGÉ D'AFFAIRES TO THE  
SECRETARY OF STATE

BRITISH EMBASSY,

No. 907.

WASHINGTON, D.C., October 24, 1923.

SIR,—I have the honour to refer to the note which you were so good as to address to Sir Auckland Geddes on February 26th last and to subsequent correspondence respecting the operations of the so-called British Transportation and Trading Company



of Nassau, Bahamas, and to inform you that I am now in receipt of a communication from my Government in regard to this matter.

In your note under reference you enquired,

- (1) whether, in case it were found that the actual interest in the Company was American, His Majesty's Government would be disposed to take any steps to prevent the use of the British flag on ships belonging to the Company for the purpose of avoiding seizure of its vessels by the agents of the United States for violation of their laws, and
- (2) what requirements are imposed under British law upon companies applying for registration of vessels under the British flag.

As to (1), in March and April last a thorough investigation was made into the status of the British Transportation and Trading Company by the appropriate authorities in the Bahamas, and it was ascertained that the Company was incorporated in Nassau on November 30th, 1921, and that the following persons comprised the directorate thereof;—William Frederick McCoy, President, Maud McCoy (wife of William F. McCoy), Treasurer and Secretary, Peter Diamond and Bruce Milroy Thompson. As far as is known, all of these persons, with the exception of the last named, were American citizens. At the time the investigation was made the Company had, however, no vessels registered at Nassau, their only vessel (*The Tomoka*, official No. 151267) having lately been sold to the Ocean Trading Company of Halifax, Canada. In these circumstances His Majesty's Government are of the opinion that the question raised in your note under reply and quoted under (1) ceases to be of practical interest.

With regard to (2), I have the honour to draw your attention to the provisions of Part I of the Merchant Shipping Act, 1894, copy\* of which I have the honour to enclose herewith. Section 1 of this Act defines the qualifications for owning British ships, and Sections 2 and 3 impose upon such ships—except those which are exempted—the obligation to be registered under the Act. The procedure for registration is laid down in

---

\*The enclosures to this note are included in the Public Statutes and, accordingly, are not printed.

Sections 4 to 14, and Sections 9 and 10 state the information which an applicant for registry of a ship must produce. At the present time the requirements of Part I of the Merchant Shipping Act, 1894, are supplemented by the British Ships (Transfer Restriction) Acts, 1915 and 1916, copies of which are also enclosed herewith. Under these Acts it is at present the practice of registrars of shipping in the United Kingdom to require, in all cases of application by a Company, a statement that the Company in question is not foreign-controlled within the meaning of these Acts. If the Company is unable to give such a declaration the matter must be referred to the Board of Trade in order that permission may be given, if deemed desirable, for the registrar to dispense with this declaration. For some time past, however, both as a matter of policy and in view of the fact that the Transfer Restrictions Acts were legislation of an emergency character enacted during a time of war, such permission has been freely granted to foreign controlled companies, and it is not refused by the Board unless in an exceptional case. The British Ships (Transfer Restriction) Acts will altogether cease to operate in August, 1924, three years after the date at which, in law, the late war came to an end.

I have the honour, etc.,

H. G. CHILTON.

The Honourable CHARLES E. HUGHES,  
Secretary of State of the United States.  
Washington, D.C.

---

18. NOTE FROM THE BRITISH CHARGÉ D'AFFAIRES TO THE SECRETARY OF STATE

BRITISH EMBASSY,

No. 5.

WASHINGTON, D.C., January 2, 1924.

*Urgent.*

SIR,—Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to draw your attention to certain statements made on behalf of the President of the United States and reported by the corre-

spondents of the *Morning Post* and *Daily Telegraph* in Washington, to those newspapers in England, in regard to the attitude of the United States Government in the matter of the seizure, outside the three-mile limit, of foreign vessels which are suspected of acting in violation of the Prohibition Law. According to these reports the view of the President is stated to be

“That the United States have never relinquished the right to seize ships whether within or without the three-mile limit which have discharged their cargoes in violation of United States law.”

The *Daily Telegraph* further reported that

“At the White House the statement is authorized that the President believes that the *Tomoka* case comes under the scope of the decision of the United States Circuit Court for Appeals in New York in the case of the *Henry L. Marshall* captured nine miles off shore. In that case, the Presidential spokesman pointed out that the *Henry L. Marshall* was discharging liquor cargo and was in contact with the shore. The British Government protested in the *Marshall* case, but withdrew its protest when it was shown that the registry of the vessel was defective.”

If the above reports are correct it would appear that the President of the United States now re-asserts the claim of the United States Government to seize foreign ships outside the three-mile limit if they have established contact with the shore for illegal purposes. His Majesty's Government realize that in August last Judge Woodrough in the Federal District Court at Brooklyn upheld the seizure of a British vessel outside the three-mile limit on the grounds that she was hovering off the American coast for smuggling purposes and had had contact with the shore. His Majesty's Government are not, however, aware that the Supreme Court have yet considered Judge Woodrough's judgment, and His Majesty's Government have therefore been under the impression that the previous policy of the United States Government not to seize foreign vessels outside the three-mile limit, which was adopted before that judgment, still held good. In these circumstances and in order to clear up the present ambiguous situation, I have been instructed by my Government

to ask you to be so good as to communicate to me, at your earliest convenience, an authoritative statement as to the present policy of the United States Government on this question.

At the same time His Majesty's Government desire me to point out that the statement emanating from the White House, above referred to, in connection with the *Henry L. Marshall* case seems to imply that the United States Government infer that the absence of a protest by His Majesty's Government against the seizure of the *Henry L. Marshall* showed that His Majesty's Government acquiesce in the seizure of British vessels outside the three-mile limit. But I would remind you that it was precisely in order to eliminate any such inference or any doubt on the part of the United States Government as to the attitude of His Majesty's Government in regard to the principle involved that I addressed to you my note No. 578 of July 10th last.

As the United States Government still appear to be under some misapprehension on this point, I have been instructed by my Government to reaffirm their position as explained in my note above-mentioned and to state that the absence of a protest by His Majesty's Government in the case of the *Henry L. Marshall* did not mean that they acquiesce in seizures outside territorial waters, that, on the contrary, the position of His Majesty's Government remains unchanged on the question of principle, and that they still regard such seizures as creating a serious situation.

Having made clear to you the attitude of His Majesty's Government, I have the honour to emphasize the importance which they attach to being informed as soon as possible of the policy of the United States Government on this question, especially in view of a further case of the seizure by the United States authorities of a British vessel on the high seas having recently arisen. The case to which I refer is that of the British schooner *Tomoka*. This vessel was seized by the United States authorities on November 24th about six miles from the shore. The *Tomoka* was first registered at Nassau, Bahamas, on April 24th, 1921, and was again registered there, when an auxiliary engine was installed on March 30th, 1923. The *Tomoka* was originally owned by the British Transportation & Trading Company of Nassau, but was sold in January, 1923, to the Ocean Trading Company of Halifax, Nova Scotia, the present owners of



the vessel. The Ocean Trading Company is a Canadian company, incorporated under the laws of Nova Scotia, and the President and Secretary of the company are Canadian subjects. I am informed that at the time of the seizure of the *Tomoka* her crew included seven British subjects. Although more than four weeks have passed since the seizure occurred, I understand that the vessel is still detained and the crew held under bond by the United States authorities at New York.

I have been instructed by my Government to enquire the reasons for the action of the United States authorities in pursuing and seizing this British vessel and her British crew on the high seas and in detaining them in New York, and further to ask that if the facts are as stated above you will be so good as to cause the competent authorities to take steps to effect the release of the British members of the crew without delay.

I have the honour to request the favour of an early reply not only as to the specific case of the *Tomoka* but also as to the general question of the present policy of the United States Government in the matter of the seizure of foreign vessels outside the limit of United States territorial waters.

I have the honour, &c.,

H. G. CHILTON.

The Honourable CHARLES E. HUGHES,  
Secretary of State of the United States,  
Washington, D.C.

---

19. NOTE FROM THE SECRETARY OF STATE TO THE BRITISH  
AMBASSADOR

DEPARTMENT OF STATE,

WASHINGTON, January 22, 1924.

EXCELLENCY,—I have the honour to acknowledge the receipt of Mr. Chilton's note No. 5, dated January 2, 1924, concerning the seizure of British vessels engaged in smuggling liquor into the United States from outside the three-mile limit. Mr. Chilton referred to reports published in British newspapers concerning statements made on behalf of the President of the United

States respecting such seizures, and he requested an authoritative statement as to the policy of the United States Government on this question.

He referred to his note No. 578 of July 10, last, concerning the seizure of the schooner *Henry L. Marshall* while operating under the British flag outside the three-mile limit of the United States, and stated that "absence of a protest by His Majesty's Government in the case of the *Henry L. Marshall* did not mean that they acquiesce in seizures outside territorial waters, that, on the contrary, the position of His Majesty's Government remains unchanged on the question of principle, and that they still regard such seizures as creating a serious situation." As has been observed before, I have taken it for granted that your Government did in fact make protest of the seizure of the *Henry L. Marshall* through your notes of August 11 and September 9, 1921.

It is far from my purpose to enter into a detailed review of the correspondence with your Embassy concerning the several cases of seizure which have arisen. I would merely advert briefly to certain facts which, it is believed, suffice to explain the position of my Government.

First: I endeavoured to state succinctly the principles on which my Government has asserted rights of seizure and condemnation in my note to your Embassy of July 16, last, concerning the case of the *Henry L. Marshall*.

Secondly: The desire which I expressed in the last paragraph of that note for an indication of the disposition of His Majesty's Government as to the espousal of the cause of a British merchant vessel engaged in an effort unlawfully to introduce intoxicating liquors into the territory of the United States in the manner adopted by the schooner *Henry L. Marshall* has, as yet, met with no response on the part of His Majesty's Government.

As Mr. Chilton made special inquiry with reference to the facts and conditions surrounding the case of the *Tomoka*, I take pleasure in setting forth at length for the confidential information of your Government what official investigations have revealed.

The *Tomoka* was formerly the American yacht *Arethusa* owned by William F. McCoy. With reference to Mr. Chilton's statement that the *Tomoka* was first registered at Nassau,

Bahama Islands, on April 24, 1921, I may state that the sale of the schooner-yacht *Arethusa*, official No. 204604, by William F. McCoy to Charles E. Albury, with change to British registry was authorized by the United Shipping Board on April 25, 1921. The *Arethusa* was first registered under the British flag on June 6, 1921, with Charles Eugene Albury, an impecunious British subject temporarily residing at Miami, Florida, named as owner. A mortgage on the schooner for two thousand pounds, dated May 28, 1921, from Charles E. Albury, to William F. McCoy, of West Palm Beach, Florida, was placed on record at Nassau on June 7, 1921. A discharge of the mortgage for two thousand pounds given by Mr. Albury to William F. McCoy, dated April 11, 1922, was recorded at Nassau on April 13, 1922. I understand that no steps were taken to obtain the approval of the Board of Trade in compliance with the provisions of the British Ships (Transfer Restrictions) Act of August 23, 1916, a copy of which was enclosed with Mr. Chilton's note No. 907, dated October 24, 1923.

By a bill of sale dated March 14, 1922, and recorded at Nassau on April 13, 1922, the *Arethusa* was transferred by Charles E. Albury to the British Transportation and Trading Company, Limited, Nassau. The information I had received regarding the American ownership of this company was set forth in the note I addressed to you on February 26, 1923, and I inquired whether, in case it was found that the actual interest in the company was American, your Government would be disposed to take any steps to prevent the use of the British flag on ships belonging to the company for the purpose of avoiding seizure of its vessels by the agents of the United States for violation of its laws. In his note No. 907, dated October 24, 1923, Mr. Chilton replied as follows:—

“As to (1), in March and April last a thorough investigation was made into the status of the British Transportation Company by the appropriate authorities in the Bahamas, and it was ascertained that the Company was incorporated in Nassau on November 30th, 1921, and that the following persons comprised the directorate thereof: William Frederick McCoy, President; Maud McCoy (Wife of William F. McCoy) Treasurer and Secretary; Peter Diamond and Bruce Kilroy Thompson. As far as is known, all of these persons, with the

exception of the last named, were American citizens. At the time the investigation was made the Company had, however, no vessels registered at Nassau, their only vessel (the *Tomoka*, official No. 151267) having lately been sold to the Ocean Trading Company of Halifax, Canada. In these circumstances His Majesty's Government are of the opinion that the question raised in your note under reply and quoted under (1) ceased to be of practical interest."

With respect to the Ocean Trading Company, the alleged present owner of the schooner *Tomoka*, to whom you state it was sold in January, 1923, and which you state is a Canadian Company incorporated under the laws of Nova Scotia, the President and Secretary being Canadian subjects, I may state that information has been received that the Ocean Trading Company, Limited, was incorporated on January 30, 1923, under the Nova Scotia Companies Act. I enclose a copy of the "Memorandum of Association of Ocean Trading Company, Limited." I also enclose a copy of an agreement dated January 30, 1923, between the British Transportation and Trading Company, Limited, of Nassau, and the Ocean Trading Company, Limited, of Halifax, whereby the schooner *Tomoka* with all her gear, stores and other effects was transferred to the Ocean Trading Company. Your attention is invited to the fact that Article 2 of the Agreement reads as follows:—

"The consideration of the said sale shall be \$50,000, which shall be paid and satisfied as follows: As to \$300 by payment of that amount in cash and as to the balance of \$49,700, by the allotment to the vendor or their nominees, of 497 fully paid shares in the capital stock of the Company of the par value of \$100 each."

I am informed that the Nova Scotia Companies Act provides as follows:—

"Any three or more persons associated for any lawful purpose other than a banking, a loan, a trust or an insurance company, may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability."

You will observe that in this case there was, therefore, a bare technical compliance with the law, as the Memorandum of



Association was signed by three persons, each of whom held, or appeared to hold, one share in the Company.

I also understand Part IV, paragraph 74 of the Nova Scotia Companies Act requires every company to keep at its registered office, "a register containing the names and addresses, and the occupations of its directors or managers," and to "send to the Registrar, a copy thereof, and from time to time notify to the Registrar any change among its directors or managers." It is stated that the Company has not complied with this section of the law.

The Nova Scotia Companies Act also is said to require the Company to keep at its registered office a register of its members, with certain particulars, which register "shall, during business hours . . . be open to the inspection of any member gratis, and to the inspection of any other person on payment of twenty-five cents, or such less sum as the Company may prescribe, for each inspection." When request was made for permission to examine the register of members at the registered office of the Company, 605-609 Barrington Street, Halifax, Mr. Fred M. Morris, who signed the agreement above mentioned as President of the Ocean Trading Company, stated that he was not a member of the Company. When informed that the public records showed him to be a member and gave that address as the registered address of the Company, he replied, on the advice of his employer, Mr. Howard Wentzell, that the register of the Company was in the hands of their attorneys, and that he would at once take up the matter with them. Subsequent inquiry at the office of McLean, Burchell and Ralston, Attorneys, brought forth the statement that that they had acted only in the incorporation of the Ocean Trading Company, Limited, that they had no register of the members and did not care to be concerned in the matter. Inquiry was also made of Mr. E. M. Ritcey, who is recorded as Secretary of the Company, but he stated that he had no register of the Company and that he was no longer a member of it, having sold his one share the same date he acquired it.

The address given in the public records as the registered place of business of the Ocean Trading Company, Limited, is, in fact, the place of business of Howards, Limited, wholesale brokers and ship chandlers. Fred M. Morris, E. M. Ritcey, and Fred C. Worrigan, whose signatures appear on the Memorandum

of Association above-mentioned, are clerks employed by Howards, Limited. Furthermore, I am informed that McCoy requested Mr. Wentzell, to recommend a firm of attorneys to draw up some papers, and that Mr. Wentzell sent him to McLean, Burchell and Ralston, and it is stated that a member of that firm suggested the young men in the store of Howards, Limited, as incorporators for the Company McCoy wished to form. It seems clear that the President and Secretary of the Ocean Trading Company referred to in Mr. Chilton's note are merely figureheads, that the Company has failed to comply with the laws of Nova Scotia in several respects, and that it is evidently an organization formed merely to cloak the actual operation of the *Tomoka* by McCoy under the British flag. The foregoing facts surrounding the case compel the conclusion that the vessel was in reality an American ship and justified the authorities of this Government in dealing with it as such.

Reference is made in this connection to the judgment of the Lords of the Judicial Committee of the Privy Council concerning the condemnation of the steamships *Kankakee*, *Hocking*, and *Genesee*, operated under American registry and claimed by the American Transatlantic Company, a company organized under the laws of the State of Delaware. The judgment was delivered on July 23, 1920, and is reported in Lloyd's List Law Reports, Trinity Sittings, 1920, Volume 4, Page 355. The Privy Council found that the American Transatlantic Company was controlled and financed from Germany, and that the steamers were, therefore, liable to condemnation.

The conduct of persons on board the *Tomoka* prior to its seizure is illustrated by the fact that on August 22, 1923, shortly before ten o'clock, p.m., the *Tomoka* opened fire on a motor boat belonging to the Coast Guard cutter, *Manhattan*, while on patrol duty off the entrance to New York Harbor. Just before opening fire a searchlight was turned on the boat clearly illuminating it and the men in it so that the boat was known to the persons on board the *Tomoka*.

The *Tomoka* was seized six miles at sea off Seabright, New Jersey, on November 24, 1923, having 155 cases of liquor on board. Her clearance from Hamilton, Bermuda, showed that she left the port on November 12, 1923, with 449 cases of liquor. The remaining cases of liquor are understood to have been

landed in the United States. At the time of the seizure, McCoy was on board and in active charge of the schooner. After the Coast Guard crew went aboard the *Tomoka* he directed the crew of the *Tomoka* not to go to New York but to go to sea which they attempted to do. Thereupon the Coast Guard took command of the *Tomoka*. Lieutenant Perkins of the Coast Guard stated in his testimony that while he was in the cabin of the schooner examining the papers which were produced by the man whom he afterwards found to be McCoy, and in the presence of Boatswain Johannessen of the Coast Guard cutter *Seneca*, Mr. McCoy offered him a sum of money, which he was given to understand amounted to \$2,000, if he would "forget about it."

With respect to the legal proceedings that have been instituted against the *Tomoka* and the members of her crew, I enclose for your confidential information extracts from the report of the officer in charge of these proceedings. You will observe that no unnecessary delay has occurred in these proceedings and that such delay as has taken place has been due to the refusal of members of the crew to give testimony. I shall keep you informed of further developments in the trial of the case and of the result of it.

In conclusion, I cannot refrain from expressing the hope that His Majesty's Government, in view of the facts above set forth, may not feel obliged to regard the *Tomoka* as a British vessel entitled to the protection of the British flag.

Accept, Excellency, the renewed assurances of my highest consideration.

CHARLES E. HUGHES.

His Excellency,  
The Right Honourable  
Sir AUCKLAND GEDDES, G.C.M.G., K.C.B.,  
Ambassador of Great Britain.

Enclosures:

Copy of Memorandum of Association of Ocean Trading  
Company, Limited.

Copy of Agreement.

Extracts from report.

*Enclosure to the note from the Secretary of State to the British Ambassador, January 22, 1924.*

MEMORANDUM OF ASSOCIATION OF OCEAN TRADING COMPANY,  
LIMITED

1. The name of the Company is "Ocean Trading Company Limited."

2. The objects for which the Company is incorporated are:—

(a) To purchase, take in exchange, charter, hire, build or otherwise acquire and hold ships and vessels with all equipment and furniture, and also shares, stocks and securities of any Company or Companies possessed of or interested in any ships or vessels, and also to maintain, repair and improve, alter, sell, exchange, let, charter, loan on commission or otherwise deal in or dispose of any ships, vessels, shares, stocks or securities in any such Company or Companies aforesaid.

(b) To carry on all or any of the businesses of ship owners, ship brokers, managers of shipping property, freight contractors, carriers by land and sea, forwarding agents, storekeepers, warehousemen, wharfingers and general traders.

(c) To buy, sell, prepare for market and deal in all and every kind and description of goods, wares, merchandise and articles of any nature whatsoever for the purpose of freighting the said ships or vessels or any of them or for any other purpose whatsoever.

(d) To employ the ships and vessels of the Company or any of them or the ships or vessels under charter or hire to the Company or any of them in trading between such ports in any part of the world as may seem expedient or for any purpose whatsoever, and to acquire any subsidies.

(e) To purchase or otherwise acquire, hold, use, sell or otherwise dispose of any goods, chattels, effects, wares, or merchandise whatever.

(f) To maintain, repair, improve, convert, alter, fit and re-fit, provide with engines, furniture, equipment, tackle and stores, ships and vessels of all kinds and descriptions.



(g) To carry on the business of towing, wrecking and salvage in all or any of its branches.

(h) To carry on the business of buying, selling and dealing in goods and merchandise of all kinds and description.

(i) To buy, sell, export, import and deal in all kinds of articles and things which may be required for the purpose of any of the said businesses or commonly supplied or dealt with by persons engaged in any of said businesses or which may seem capable of being profitably dealt with in connection with any of the said businesses.

(j) To purchase, take on lease, acquire, construct, hold, sell, occupy, sell, lease, mortgage or otherwise dispose of wharves, piers, warehouses or storage rooms, docks, landings, landing places and every facility in connection therewith.

(k) To subscribe for, take or otherwise, acquire, any shares, bonds, debentures and other securities in any other company having objects altogether or in part similar to those of this Company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company.

(l) To promote any Company or Companies for the purpose of acquiring all or any of the property and liabilities of this Company, or for any other purpose which may seem directly or indirectly calculated to benefit this Company.

(m) To construct, maintain and alter any buildings, or works necessary or convenient for the purpose of the Company.

(n) To sell or dispose of the undertaking of the Company or any part thereof or any real or personal property of the Company or any part thereof for such consideration as the Company may think fit, including, but so as not to restrict the generality of the foregoing, shares, bonds, debentures, debenture stock or securities of any Company having objects altogether or in part similar to those of this Company.

(o) To amalgamate with any other Company having objects altogether or in part similar to those of this Company.

(p) To distribute any of the property of the Company in specie among the members.

(q) To sell, improve, manage, develop, exchange, lease, mortgage, enfranchise, dispose of, turn to account or otherwise

deal with all or any part of the property and rights of the Company.

(r) To do all or any of the above as principals, agents, contractors, trustees, or otherwise and by or through trustees, agents or otherwise, and either alone or in conjunction with others.

And the doing of all such other things as are incidental or conducive to the attainment of the above objects and including the matters and things set out in subsection 3 of section 24 of the Act. Provided that nothing herein contained shall be taken to authorize the carrying on business of a banking, loan, insurance or trust company by this Company.

And it is hereby declared that the intention is that the objects set forth in any sub-clause of this clause shall not, except where the context expressly so requires, be in any wise limited or restricted by reference to or inference from the terms of any other sub-clause, or by the name of the Company. None of such sub-clauses or the objects therein specified, or the powers thereby conferred shall be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause of this clause, but the Company shall have full power to exercise all or any of the powers conferred by any part of this clause, and notwithstanding that the business, undertaking, property or acts, proposed to be transacted, acquired, dealt with or performed, do not fall within the objects of the first sub-clause of this clause.

3. The liability of the members is limited.

4. The capital of the Company is One Hundred Thousand Dollars (\$100,000.00) divided into One Thousand Shares of One Hundred Dollars each, with power to divide the shares of the capital for the time being into several classes and to attach thereto respectively any preferred, deferred, qualified or special rights, privileges and conditions.

We the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of the Memorandum of Association and we respectively agree to take the number of shares in the capital stock of the Company set opposite our respective names.

Names, Addresses and Description of subscribers	Number of shares taken by each subscriber
FRED M. MORRIS (Sgd.) 70 Queen St., Dartmouth, Clerk.	One
EVERETT M. RITCEY (Sgd.) 284 Robie Street, Halifax, Book-keeper.	One
FRED. C. WORRIGAN, 108 North Street, Halifax, Shipping clerk.	

Dated the 30th day of January, A.D. 1923.

Witness to the above signatures:

CHARLES TWEE,  
Myrtle Street, Dartmouth,  
Secretary.

*Enclosures to the note from the Secretary of State to the British  
Ambassador, January 22, 1924*

AGREEMENT made this 30th day of January, A.D. 1923,

BETWEEN

BRITISH TRANSPORTATION AND TRADING COMPANY LIMITED,  
a body corporate with head office at Nassau, British  
West Indies, hereinafter called the "Vendor".

*Of the one Part*

AND

OCEAN TRADING COMPANY LIMITED, a body corporate with  
head office in Halifax, in the County of Halifax, here-  
inafter called the Company.

*Of the other Part*

Whereby it is agreed as follows:—

1. The Vendor shall sell and the Company shall purchase  
the schooner *Tomoka*, registered at Nassau, British West Indies,  
together with all her gear, stores and other effects.

2. The consideration of the said Sale shall be Fifty Thousand Dollars which shall be paid and satisfied as follows: As to \$300 by the payment of that amount in cash and as to the balance of \$49,700 by the allotment to the Vendor or their nominees of 497 fully paid shares in the capital stock of the Company of the par value of \$100.00 each.

3. The purchase shall be completed on the 30th day of January, A.D. 1923, and thereupon the Vendor shall transfer the said ship and premises to the Company free from encumbrances.

IN WITNESS WHEREOF the parties hereto have hereunto caused their corporate seals to be affixed attested by the signatures of their proper officers this 30th day of January, A.D. 1923.

Signed, sealed and delivered in the presence of F. D. SMITH	}	BRITISH TRANSPORTATION AND TRADING CO., LTD., WILLIAM F. MCCOY, <div style="text-align: right;"><i>Pres.</i></div> MAUDE K. MCCOY, <div style="text-align: right;"><i>Sec. &amp; Treas.</i></div> OCEAN TRADING COMPANY LIMITED FRED. M. MORRIS, <div style="text-align: right;"><i>President</i></div> EVERETT M. RITCEY, <div style="text-align: right;"><i>Secretary</i></div>
---	---	---

---

*Enclosure to the note from the Secretary of State to the British Ambassador, January 22, 1924.*

EXTRACTS FROM THE REPORT CONCERNING THE LEGAL PROCEEDINGS INSTITUTED IN THE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK WITH RESPECT TO THE SCHOONER "TOMOKA" AND HER OFFICERS AND CREW.

"A libel was filed against the *Tomoka*, alleging numerous violations of customs and prohibition statutes dating back several years. As you will probably recall, the *Tomoka*, formerly the *Arethusa*, was owned by William F. McCoy prior to February, 1921. In February, 1921, McCoy sold both the



schooner *Marshall* and the schooner *Arethusa* to Charles Eugene Albury, a British subject temporarily residing in Miami, Florida. Albury was then and is now an impecunious and worthless character who never had the money with which to purchase either of these vessels and who also never was more than a nominal and record owner. In each case, large mortgages were taken back from Albury by McCoy, who continued to operate both vessels.

"During the Spring and Summer of 1921 the *Arethusa* and the *Marshall* both made frequent trips to the neighbourhood of this country and landed many thousand cases of whiskey into the United States either on the New Jersey shore or in Long Island. McCoy superintended all of the voyages of these two vessels and in one case the *Arethusa* came within the territorial waters with her cargo of intoxicating liquor, according to the testimony of one of the members of the crew and of one of McCoy's accomplices.

"As a result of the operations of the *Arethusa* and the *Marshall* in 1921, McCoy was indicted in the Eastern District of New York for conspiracy to violate the National Prohibition Act and for other crimes in connection with his rum-running.

"The schooner *J. B. Young*, which was seized by the United States in the late Fall of 1921, transferred some of its cargo to the *Arethusa*. In the Summer of 1921, Customs Special Agent Sullivan went to Nassau to endeavour to prevail upon a valuable witness in the *Young* case, who had forfeited his bond, to return and give his testimony. The witness refused to return, saying that his wife would not be safe if he testified against McCoy. Sullivan saw McCoy on this visit and McCoy boasted that he still owned the *Arethusa*; that the United States would never get him and that he had the backing of the British Government. . . .

"McCoy has always been and now is the owner of the *Arethusa* or *Tomoka*, but shortly after he had transferred the paper title to Albury, he organized the British Trading and Transportation Company, Ltd., of this Company, he was the President and his wife was the Secretary. . . .

"Subsequently, McCoy formed another corporation, the Ocean Trading Company, in Canada. This corporation had a capital stock of \$50,000 divided into 500 shares of \$100 each.

The company took over the *Tomoka* and in return McCoy received 497 shares of the capital stock of the company, the three remaining shares being held by the dummy incorporators. These facts were stated to me by Colonel Felder, McCoy's recently appointed counsel. . . .

"The libel was duly filed and subpoenas were issued returnable December 15, 1923, to take testimony of the crew of the *Tomoka de bene esse*. On the return day of these subpoenas, Colonel Felder's partner appeared and stated that Colonel Felder was sick and in Georgia and asked for an adjournment. This I opposed on the ground . . . that his only object in getting the adjournment and in trying to keep these men from testifying, was to keep the Government from obtaining the true facts in the case. Adjournment was granted for two days only and on December 21, an attempt was made to take the depositions of the crew.

"One of the members of the crew was Michael Murphy, who had also been a member of the crew of the *Marshall* when she was seized in 1921 and who had spent six months in jail for refusing to answer questions in similar proceedings in connection with the *Marshall*. Colonel Felder's partner appeared for the members of the crew. . . . Michael Murphy . . . forfeited his bail and has disappeared. The other members of the crew refused to answer questions and a motion was made to have them held in contempt as was done in the *Marshall* case. Judge Hand held them in contempt, but said there was some doubt in his mind as to Judge Mayer's ruling in the *Marshall* case and consequently allowed them out on bail pending appeal to the Circuit Court of Appeals.

" . . . . Colonel Felder represents in this country the large rum-running interests which are carrying on their illegitimate business between the Bahama Islands and the United States. He believes that he has the backing of the British Government in any action he may take.

"The case of the *Tomoka* is on all fours with the *Marshall* case as far as the point of seizure, the violation of law by the vessel, its actual ownership by McCoy and its dummy ownership by others, is concerned. When the *Marshall* case came up, efforts were made by the attorneys for McCoy to interest the British Consul in this country, but such efforts were unavailing

as the Consul stated that his Government did not desire to protect bootleggers. The *Tomoka* case is, of course, much more aggravated than the *Marshall* case in that the *Tomoka* has been rum-running now for three full years and has just been caught. McCoy, however, who at the time the *Marshall* was seized was an unknown and supposedly innocent party, is now under indictment for his complicity in smuggling operations and by the judgment of the Court in the *Marshall* case has practically been convicted for such operations”.

“Writs of error have been sued out by the seven witnesses and they have been admitted to bail in the sum of \$2,500 each pending the decision of their appeal. A motion to advance the cause for argument in the Circuit Court of Appeals was heard on January 7, 1924. The motion to advance was granted. The case has been set for argument in the first week of the February, 1924, Session of the Circuit Court of Appeals for the Second Circuit. At the time of making the application to advance, which was made by the defendants in error, the Government moved to vacate the stay of the commitment in the contempt cases. The Circuit Court of Appeals, however, refused to vacate the stay.”

---

20. NOTE FROM THE BRITISH AMBASSADOR TO THE SECRETARY  
OF STATE

BRITISH EMBASSY,

WASHINGTON, D.C., May 14, 1923.

No. 373.

SIR,—At the request of the Governor General of Canada, I have the honour to inform you that the United States fishing vessel *Siloam* was recently seized for fishing in Canadian territorial waters off the west coast of Vancouver Island, British Columbia, when it appears that one of the members of the crew was unfortunately shot and subsequently died.

The Governor General of Canada requests me to state, for the information of the United States Government, that full enquiries are being made into this matter and that as soon as complete information is available a full statement of the facts

of the case will be furnished to His Majesty's Embassy for communication to you. As soon as this information is received I shall not fail immediately to inform you.

I have the honour, &c.,

A. C. GEDDES.

The Honourable CHARLES E. HUGHES,  
Secretary of State of the United States,  
Washington, D.C.

---

21. NOTE FROM THE BRITISH CHARGÉ D'AFFAIRES TO THE SECRETARY OF STATE (TOGETHER WITH ENCLOSED REPORT)

BRITISH EMBASSY,

WASHINGTON, D.C., June 19, 1923.

No. 492.

SIR,—With reference to my note No. 373 of the 14th ultimo, I have the honour to transmit to you herewith, at the request of His Excellency the Governor General of Canada, a report from the Deputy Minister of Marine and Fisheries containing full details of the recent seizure by the Canadian authorities of the United States fishing vessel *Siloam* in connection with which one of the members of the crew of that vessel was shot and subsequently died.

I have the honour, &c.,

H. G. CHILTON.

The Honourable CHARLES E. HUGHES,  
Secretary of State of the United States,  
Washington, D.C.

REPORT from the Deputy Minister of Marine and Fisheries, Ottawa, with regard to the seizure of the United States fishing vessel *Siloam*, in connection with which one of the members of the crew of that vessel was shot and subsequently died.

OTTAWA, May 30, 1923.

The C.G.S. *Malaspina* was engaged at the time in the fur seal patrol, as well as in preventing unlawful fishing in Canadian territorial waters. The vessel left Nootka Sound at 5.35 a.m.



on the morning of the 24th ultimo. She proceeded seawards for about eleven miles. The course then was set so as to pass Cape Cook seven miles distant. At about 11 a.m. the wind freshened, and the Captain decided to haul in for Quatsino Sound. Solander Island was being passed about one-quarter mile distant. About 11.30 a.m. the Chief Officer called the Captain's attention to a vessel on the starboard bow, which vessel later proved to be the *Siloam*. While passing Solander Island a fishing buoy flag was sighted at 11.57 a.m. The fishing vessel was then observed to be heading offshore. The Captain at once had the course of the *Malaspina* altered so as to intercept the fishing vessel, and he had the usual whistle given for the fishing vessel to stop. She, however, did not do so, and the *Malaspina* was then ranged alongside when the Captain verbally ordered the Captain of the *Siloam* to heave to. The latter did not do so, but shouted back asking in rather emphatic language what was wanted, and he continued to go offshore. The Captain then ordered the six-pounder gun to be loaded with a blank shell, and three rounds were fired across the bow of the *Siloam*, but she did not stop. The Captain of the *Malaspina* then again ranged alongside and ordered the Captain of the *Siloam* to heave to, when the latter procured a rifle and pointed it at the Captain of the *Malaspina* threatening to shoot, but one of the men on the *Siloam* pulled the rifle down. This action was repeated. The six-pounder was then loaded with a steel shell. Four shots were fired across the *Siloam* and near her bow, but she was not stopped. The Captain of the *Malaspina* again ranged alongside, and verbally ordered the Captain to stop, and intimated that if he did not do so he would sink his ship, but the *Siloam* continued on her course. Seven more rounds of shell were fired around the bow and stern of the *Siloam* in an attempt to disable her but without success, and the *Malaspina* again ranged alongside and the Captain ordered the Captain of the *Siloam* to stop but he did not do so. The Captain of the *Malaspina* then ordered rifles to be brought out. They were handed to four of the crew and on the Captain's orders a volley was fired at the ship, but notwithstanding this the *Siloam* kept on. The Captain then ordered a volley to be fired at the wheelhouse with the object of disabling the steering gear. It was not then known in what part of the ship the crew were. After this volley the Captain of the *Siloam* stopped his ship and came on deck and

shouted that a man had been shot. The crew of the *Siloam* then launched a dory and brought the wounded man to the *Malaspina* and then returned to their ship. Meantime the Second Officer of the *Malaspina* and the two men were sent on board the *Siloam* to secure a hawser to her while the wounded man was receiving every attention possible on board the *Malaspina*. While the Second Officer was making the hawser fast, the crew of the *Siloam* left the boat remarking that the Second Officer would not be there long. There is no doubt that the crew of the *Siloam* scuttled her before they abandoned her, as none of the shots from the six-pounder were observed to hit her, and the boarding officer from the *Malaspina* noticed that the hold of the *Siloam* was dry when he went on board of her. The boat that had taken the men from the *Malaspina* to the *Siloam* to attach the hawser returned to the former, and the escaping crew were not observed from the *Malaspina* until they were a considerable distance off, with a sail set in their boat, and they were running before the wind. As the Captain of the *Malaspina* was anxious to have the wounded man attended to by a doctor as speedily as possible he decided to proceed to port with the *Siloam* in tow, but he had a wireless message sent to the Provincial officers along the coast to try and intercept the crew of the *Siloam*, and at the same time wired the facts to the Chief Inspector of Fisheries, who set other machinery in motion to that end. Shortly after the hawser was made fast to the *Siloam* those on board signalled the *Malaspina* that the *Siloam* was sinking, so the men were again transferred to the *Malaspina*. At this time the water was up to the deck of the *Siloam*. The *Malaspina* was headed for Quatsino, and after proceeding about five miles the towing hawser parted. The largest hawser on board the cruiser was then made fast to the *Siloam*; but it also parted after the vessel was towed about two miles farther. The *Siloam* was then abandoned, and the *Malaspina* was headed at full speed for Quatsino where the nearest medical assistance was available, but unfortunately the wounded man died before Quatsino was reached. On arrival at Quatsino the doctor, coroner and police officer came on board, and took care of the body. The following day an inquest was held, after which the *Malaspina* proceeded to Kyuquot, where it was learned that the crew of the *Siloam* had succeeded in escaping capture and had gone to the United States on the United States fishing schooner *Jennie*.

Ramming of the *Siloam* was considered by the Captain of the *Malaspina*; but on account of the sea that was running at the time, it would have endangered the killing or drowning of members of the crew of the *Siloam* and putting the *Malaspina* out of commission also. He, therefore, decided that this method should not be tried until after every other means had failed.

There is no room for any doubt that the crew of the *Siloam* were fishing in Canadian territorial waters. The vessel's gear was practically all out with the exception of two skates, and live fish were on deck that there had not been time to clean. The bait tray was nearly full of cut bait ready for the next haul. The positions of two of the fishing buoys and other positions are as follow:—

Position of the 1st Buoy sighted, Solander Island bearing E. by S. Magnetic. Double Island NNE. This gives position of buoy about one mile off shore.

Position of ship when she finally stopped, Solander Island bore NW. by N. Extreme Pt. of Brooks Peninsula NE.  $\frac{3}{4}$  E. Mag.

Position of ship when taken in tow, Solander Island NW. by N. extreme easterly point of Brooks Peninsula NE. by N. Mag.

Position of 2nd Buoy Reef Point bearing NW. by N.  $\frac{1}{4}$  N. Extreme of Westerly Point Cape Cook E. by S.  $\frac{1}{2}$  S. 3rd point or hummock on west side of Cape Cook abeam bearing NE. by E.  $\frac{1}{4}$  E.

Position of 1st Buoy verified by Second Officer and myself on return to gear with boat in tow. Sextant angles taken by the Chief Officer agree very closely with bearings taken.

A copy of the evidence taken at the inquest is also attached.

ALEX. JOHNSTON,  
*Deputy Minister of Marine and Fisheries.*

22. NOTE FROM THE SECRETARY OF STATE TO THE BRITISH  
CHARGÉ D'AFFAIRES

DEPARTMENT OF STATE,

WASHINGTON, July 2, 1923.

SIR,—I beg to acknowledge the receipt of the Ambassador's Note No. 492 of June 19, 1923, with which was transmitted, at the request of the Governor General of Canada, a report from the Deputy Minister of Marine and Fisheries concerning the seizure by the Canadian authorities of the United States fishing vessel *Siloam*, when one of the members of the crew of that vessel was shot and subsequently died.

Accept, Sir, the renewed assurance of my high consideration.

CHARLES E. HUGHES.

Mr. HENRY GETTY CHILTON,

Chargé d'Affaires ad interim of Great Britain.









# CLAIM IN RESPECT OF THE SHIP "I'M ALONE"

Answering Brief of the Government of the United  
States of America to the Claim of His Majesty's  
Government in Canada in Respect  
of the Ship "I'm Alone"

---

Submitted on Behalf of the Government of the United States  
for the Joint Consideration of

The Honourable Willis Van Devanter  
and  
The Right Honourable Lyman Poore Duff



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1933





**Answering Brief of the Government of the United States of America to the Claim of His Majesty's Government in Canada in Respect of the Ship "I'm Alone" under the Provisions of Article 4 of the Convention Concluded January 23, 1924, between His Majesty and the United States**

This Brief presents for the consideration of the Commissioners a preliminary suggestion respecting the nature and scope of their function under the convention and a discussion of each of the three preliminary questions formulated by them.

---

I

PRELIMINARY SUGGESTION RESPECTING THE  
FUNCTION OF THE COMMISSIONERS

It is submitted that the Commissioners, before approaching the consideration of the three questions which they have formulated, should determine what is the nature and scope of the function which, pursuant to the convention, they are expected to perform.

It is the contention of the United States that the Commissioners have a jurisdiction wider and more elastic than that of a court or even of a board of arbitrators: that they are in fact constituted by article 4 of the convention the authoritative advisers of the two Governments, with the duty of recommending a course which, under all the circumstances, they deem it wise for the two Governments to pursue.

The basis of this contention will appear when the convention is carefully studied. It is believed that such a

study must be limited to an analysis of the convention itself as no aid to its interpretation can be derived from a reading of the international correspondence which preceded it. It appears that the discussion between the two Governments was directed at the substantive provisions of the agreement and that the present article 4 was accepted without debate in the precise form in which it was proposed by His Majesty's Government in the draft treaty of December 3, 1923 (Canadian Brief, p. 110).<sup>1</sup> It is true that both the Secretary of State (in his communication of April 17, 1929, at p. 44) and the Canadian Minister (in his reply of April 24, 1929, at p. 50) speak of the proposed reference to the Commissioners as a reference to arbitration. It is submitted, however, that the Commissioners are competent to determine what their function was intended by the convention to be, irrespective of the informal language used by the two Governments in making the submission.

The avowed purpose of the convention is the avoidance of difficulties which might arise between the two Governments in connection with the laws in force in the United States on the subject of alcoholic beverages. In pursuit of this purpose certain rights are conferred upon the United States and then, in article 4, it is provided that a claim based upon the alleged "improper or unreasonable exercise of the rights" thus conferred "shall be referred for the joint consideration" of two Commissioners. If after such "consideration" the Commissioners find themselves able to unite in making recommendations to the two Governments, the Governments undertake that "effect shall be given" to such recommendations. If the Commissioners are unable to agree upon a report, their function

---

<sup>1</sup> For convenience the Brief submitted on behalf of His Majesty's Government in Canada is referred to throughout this brief as "the Canadian Brief" and is sometimes designated by the initials "C. B."

is ended and the claim must be referred to the established Claims Commission substantially as if the Commissioners had never considered it.

From these provisions the United States draws the inference that the Commissioners were conceived of by the draftsmen of the convention as occupying a position midway between that of the diplomatic representatives of the two Governments and the tribunal which might ultimately be called upon to pass upon the merits of the claim as made. If (as has happened in the instant case) divergent views respecting the facts and law were expressed by the Secretary of State of the United States and by the Secretary of State for External Affairs of His Majesty's Government in Canada, the convention contemplated an attempt by two well-disposed advisers to prevent, if possible, an otherwise inevitable international litigation. Unless the Commissioners are to conceive of their function as different in kind from that of the Claims Commission or of an international court, no reason is perceived for bringing the office of Commissioner into existence. If the Commissioners were merely to attempt to adjudicate a claim as it would be adjudicated by a court, the fourth article of the convention would accomplish nothing except to make possible two international litigations instead of one. On the other hand, if the Commissioners were vested with authority to unite in advising either Government that the pending claim was not one which a friendly neighbor would be justified in pressing, the Government making the claim could then withdraw it without embarrassment or loss of prestige and without the creation of a precedent which might thereafter give rise to difficulty. In such an event, the Commissioners would in effect say to the complaining Government: "We assume that if the facts as we have ascertained them had been known to you at the outset, this claim never would have been made; and therefore we do



not hesitate to recommend that you press it no farther.” Unquestionably there is room in the sphere of international controversy for the intervention of advisers of this sort. If the framers of this convention intended to provide for such intervention, they made an important contribution to the peaceful settlement of international controversies. They had suggestive precedent for creating an advisory body of this type. Commissions of inquiry had been provided for in the Hague conventions of 1899 and 1907 looking to the pacific settlement of international disputes. Article 14 of the 1899 convention provides that, “The report of the international commission of inquiry is limited to a statement of facts and has in no way the character of an arbitral award. It leaves the conflicting powers entire freedom as to the effect given to this statement.” In the convention of 1907, article 35 had replaced the provision just quoted, but its wording was almost identical. Similar in kind to the commissions of inquiry thus contemplated by the Hague conventions was the International Joint Commission set up by the treaty between the United States and Great Britain (signed January 11, 1909), relating to boundary waters and questions arising along the boundary between the United States and Canada. Of the same type was the convention between the United States and Central American Republics signed February 7, 1923. In the case of the Commissions created under these treaties it was specifically provided that the findings of the Commissioners were in the nature of reports upon the matters in dispute, but that they did not have the character of judicial decisions or arbitral awards. In the present case (the convention of January 23, 1924) the contracting parties put it within the power of the Commissioners by uniting in a report to bind both Governments to give effect to the joint recommendations of the Commissioners. To this extent the convention of 1924 takes more advanced

ground than had been taken in the treaties just cited. The parties to the convention of 1924, however, left the character of the recommendations to be determined exclusively by the Commissioners and in no way limited them to the application of the principles which would control the action of a municipal or of an international court. In this way they made it possible for the Commissioners to dispose of the controversy as above suggested by refraining from making a decision of legal questions and by advising that upon the facts disclosed by the record the issue had not risen to the dignity of an international controversy.

It is earnestly contended, on behalf of the Government of the United States, that the Commissioners should interpret their function as above suggested. No better illustration can be found of the service which in that event they might render than is afforded by the first of the three questions which the Commissioners have formulated.

---

## II

### DISCUSSION OF THE THREE PRELIMINARY QUESTIONS

#### *1. The First Question*

In the Canadian Brief it is urged (p. 10) that "the Commissioners should not sit in review on the exercise of discretion by the two Governments in deciding to present the claim or on the action of the claimant Government in continuing to press it."

In reply it is suggested that article 4 of the convention made it the duty of the two Governments to refer the claim to the Commissioners and that no review of the action of the two Governments in so doing is now pro-

posed. It is further suggested that, if the Commissioners interpret their function as that of authoritative advisers to the two Governments, they may properly make to either Government any recommendation upon which they can agree with respect either to the further pressing of the claim or to any other phase of the controversy.

In the instant case the *I'm Alone*, a Canadian-built vessel, was sunk more than 200 miles from the coast of the United States. At the time of the sinking she was registered in the name of the Eugene Creaser Shipping Co., Ltd., a company incorporated under the laws of the province of Nova Scotia. Upon the face of the record she was a British ship and her owners appeared to have complied with all the applicable provisions of the British Merchant Shipping Act of 1894. Under such circumstances it was proper that His Majesty's Government in Canada should take the action disclosed by the diplomatic correspondence set forth in the Canadian Brief. (See, in particular, pp. 21-44.) No question respecting the propriety of the action thus taken is raised by the United States directly or by implication. This is true notwithstanding the knowledge of His Majesty's Government that the *I'm Alone* had been for a number of years engaged in attempts to smuggle liquor into the United States. (Canadian Brief, pp. 23; 66 *et seq.*)

Moreover, for the purposes of this argument only, it is conceded by the United States that, under the provisions of the Merchant Shipping Act, a British corporation may lawfully be the qualified owner of a British ship entitled to registry under that statute even if all or some of the stock of the corporation is owned by individuals who could not themselves qualify as owners of a British ship. In a court it may well be that evidence either of registered or beneficial ownership by foreigners would be excluded. Such exclusion would in that event

be proper whether the effort of a defendant was to defeat a claim or to mitigate damage. In other words, the contention so clearly and effectively made by the Canadian Agent is a lawyerlike contention, which can be supported both on principle and by authority. The line of argument which he follows would be applicable (for example) if in a federal court in the United States an attempt were made to defeat jurisdiction founded upon diverse citizenship by showing that the shares in a corporate litigant were owned by citizens of the state of the other party. Or, again, his argument would be conclusive if made in opposition to such an effort to induce a court to disregard corporate form, as was made in *Broderip v. Salomon* (Law Reps., 1897, Appeal Cases, 22).

The foregoing concession is made for the purposes of this argument only, because even a court reluctant to disregard corporate form might hereafter follow the precedent set by the Judicial Committee of the Privy Council in a well-known prize case. Reference is made to the *Kankakee*, *Hocking*, and *Genesee* (IV Lloyd's List Law Reports, 355). In that case vessels were held to be lawfully condemned as German vessels though duly registered in the name of a Delaware corporation, the stock of which appeared to be American-owned. To the same effect is the *St. Tudno* (Law Reports, Probate, 1916, p. 29).

Irrespective, however, of the action that a court might take, it might well be that the Commissioners, after full consideration, would feel disposed to recommend that His Majesty's Government should in the instant case do what a court might not do: i. e., disregard the corporate form and take cognizance of the fact (averred in paragraph 2 of the Answer of the United States; C.B., p. 58) that the *I'm Alone* was actually operated under the direction and control of citizens of the United



States for the purpose of transporting liquor into the United States in violation of the municipal law of the United States. No suggestion that this was the true state of facts was made to His Majesty's Government before the submission. The detailed statement of the operations of the *I'm Alone* appearing at pages 67-71 of the Canadian Brief had indeed been brought to the attention of His Majesty's Government, but, for all that there appeared, she might well have been operated within the law and by British subjects. His Majesty's Government (see C.B., p. 100) had, on a previous occasion, taken the position that a British ship might lawfully sell liquor on the high seas to purchasers of any nationality and that there was therefore "no obligation upon His Majesty's Government to interfere with the prosecution of a perfectly legitimate trade." But that Government had been quite ready to recognize that the term "perfectly legitimate trade" could have no application if an American ship, owned and operated by American citizens, had sought to acquire British registry in order to pursue its liquor smuggling under the protection of the British flag (Henry L. Marshall, C.B., p. 116). Moreover, when the Secretary of State (January 22, 1924; C.B., p. 126 *et seq.*) made an explicit statement of facts as to registry and ownership in the case of the *Tomoka* essentially like the situation respecting the *I'm Alone*, it appears that His Majesty's Government did not insist upon the protest as originally made but discreetly treated the incident as closed. Had the facts respecting the ownership and registry of the *I'm Alone* been ascertained and brought home to His Majesty's Government before the submission, presumably the same course would have been followed as in the *Tomoka* case. These facts having been ascertained subsequent to the submission, there could be no possible embarrassment or indelicacy in a joint recommendation by the Commissioners that

His Majesty's Government should not further espouse the claim of American bootleggers for compensation for destruction of their property and interference with their nefarious business. This suggestion is particularly in point if (for the purpose of discussing these preliminary questions) the averments in section *e* of paragraph 3 of the Answer of the United States be taken as true—namely, that on a previous voyage of the *I'm Alone* she had sent her lifeboats ashore laden with part of her cargo of liquor and that these boats, at the time of the hailing and subsequent sinking of the *I'm Alone*, were within the territorial limits of the United States ready for use in the discharge of the liquor with which at that time she was laden. As to the significance of this fact, the Commissioners are referred to the *Araunah*, 1888 (82 British and Foreign State Papers, p. 1058; II Moore's Digest, 985) and to the *Grace* and *Ruby*, 1922 (283 Fed. Rep. 475; appeal dismissed, 266 U.S. 635).

The Commissioners are respectfully referred to the note of the Secretary of State (Jan. 22, 1924; C.B., p. 126) in which he sets forth the facts respecting ownership and registry in the *Tomoka* case. In that case one McCoy, an American citizen, owned the schooner-yacht *Arethusa* and, in connection with a sale of her to Albury, obtained the authority of the United States Shipping Board to change to British registry. Albury was an impecunious British subject temporarily residing at Miami, Florida. He gave what appears to have been a purchase-money mortgage on the ship and later transferred her to a British corporation at Nassau. This corporation consisted of McCoy, his wife, and three persons each of whom held a qualifying share. McCoy, his wife, and two of the other three were American citizens. Still later and while inquiries by the Department of State respecting her were pending, the ship was sold to another British corporation,

this time at Halifax. Only three shareholders appeared of record, each owning a single share, although the agreement of sale stated that of the purchase price of \$50,000, \$49,700 was to be paid in the stock of the company. Meanwhile McCoy, the substantial owner of the rumrunner, was under indictment in the United States for offenses against the prohibition law. It was upon this state of facts that the Secretary of State (C.B., p. 121) requested an investigation and asked that the British Ambassador inform him "whether in case it is found that the actual interest involved is American, his Government would be disposed to take any steps to prevent the use of the British flag on ships belonging to this concern for the purpose of avoiding seizure of its vessels by the agents of the United States for violation of its laws". The fact that, pending the inquiry the transfer from the Nassau corporation to the Halifax corporation had taken place, made it possible for the British Chargé d'Affaires (by limiting his answer to the status of the former corporation) to reply (C.B., p. 122) that the question raised in the note "ceases to be of practical interest". In the instant case, however, the question, instead of being academic, is of great practical importance, and it is hoped that if the facts are ascertained to accord with the allegations in paragraph 2 of the Answer of the United States (C.B., p. 58) the Commissioners will recommend that the pending claim be not farther pressed.

Such a recommendation would be in harmony with the spirit of the Merchant Shipping Act of 1924, which plainly seeks to limit the protection of the British flag to ships which are wholly in British ownership and control. While (as already provisionally conceded by the United States) a rule of law permitting judicial inquiry into the nationality of stockholders in a British corporation might be impracticable, there is no good reason why such an inquiry

should not be made by advisers who have the responsibility of recommending a wise course of conduct to be pursued by the two Governments upon the facts of a particular case. If it should appear in any case that a fractional interest in a ship was owned by an American citizen, such ship could not under the act be deemed a British ship. Nor could it be deemed a British ship if in the instant case ownership interests in the *I'm Alone* had been vested, to the extent of their qualifying shares, in the British subjects appearing as stockholders of record, and (as to the residue) in individual American bootleggers. If it should appear, in the instant case, that what really has happened is that while all the shares are registered in the names of British subjects the entire beneficial interest in the ship has been sold for cash by a British subject to an American citizen or by one American citizen to another and that the registered holders of shares are mere puppets with no stake whatever in the venture, the extent to which the British flag has been used by law-breaking Americans as a screen for their nefarious trade would immediately appear. If the Commissioners were satisfied that this was the actual fact, and that if compensation were awarded in the present case, it would ultimately find its way into the pockets of American smugglers or of members of a crew who took the chances incident to rumrunning, the Commissioners might well recommend that His Majesty's Government should not lend itself to the prosecution of their claim. If the fact of ultimate ownership of the *I'm Alone* had been disclosed at the time of application for registry, no doubt the application would have been refused in accordance with the decision of the British Court of Appeal in the *Polzeath* (Law Reports, Probate, 1916, p. 241). The mere fact that the registration authorities were deceived is no reason why the Commissioners should feel themselves bound by the record of registration.



As respects the identification of the members of the crew with the vessel, the Commissioners will doubtless feel disposed to agree with the conclusions reached by the Supreme Court of the United States, in *Ford v. United States*, 273 U. S. 593 (1926). It is pertinent to cite the following passage from the opinion of the Court in that case:

The treaty provides for the disposition of the vessel after seizure. It has to be taken into port for adjudication. What is to be adjudicated? The vessel. What does that include? The inference that both ship and those on board are to be subjected to prosecution on incriminating evidence is fully justified by paragraph 1 of Article II, in specifically permitting examination of the ship papers and inquiries to those on board to ascertain whether, not only the ship, but also those on board, are endeavoring to import, or have imported, liquor into the United States. If those on board are to be excluded, then by the same narrow construction the cargo of liquor is to escape adjudication, though it is subject to search as the persons on board are to inquiry into their guilt. It is no straining of the language of the article therefore to interpret the phrase "the vessel may be seized and taken into a port of the United States . . . for adjudication in accordance with such laws," as intending that not only the vessel but that all and everything on board are to be adjudicated. The seizure and the taking into port necessarily include the cargo and persons on board. They cannot be set adrift or thrown overboard. They must go with the ship—they are identified with it. Their immunity on the high seas from seizure or being taken into port came from the immunity of the vessel by reason of her

British nationality. When the vessel lost this immunity, they lost it too, and when they were brought into a port of the United States and into the jurisdiction of its District Court, they were just as much subject to its adjudication as the ship.

For these reasons it is earnestly urged that the Commissioners should answer the First Question by deciding that they are authorized to enquire into the beneficial or ultimate ownership of the *I'm Alone*; and this with a view to recommending (if such ultimate ownership is found to be vested in American bootleggers) that his Majesty's Government should not farther press the pending claim.

## 2. *The Second Question*

In view of the Answer filed by the United States, it is properly stated in the Canadian Brief that the second question has two aspects. In one of these aspects the question is whether the revenue legislation of the United States furnished a justification for the conduct of the officers of the United States. In view, however, of a decision of the Supreme Court of the United States rendered since the Answer of the United States was filed, this aspect of the second question need not be considered. In the case of the *Mazel Tov* (*Cook v. United States*, decided Jan. 23, 1933, 77 L. Ed. 396) the Court held that (as between citizens of the United States and Great Britain) the convention superseded the otherwise applicable provisions of the United States Tariff Acts. In the discussion of the instant case the United States will draw from the *Mazel Tov* decision certain inferences deemed to be applicable to the case of the *I'm Alone*.

If, as is implied in the decision of the Supreme Court, the convention confers upon the United States *rights* exercisable within treaty waters, it will not be disputed that

it must also impose upon Great Britain some correlative obligation. The obligation correlative to a right to board a British ship is the obligation of the ship to permit the boarding to take place. Accordingly the first point for consideration is the scope of the right to board.

Two views are advanced respecting the scope of this right. One is the view that is clearly and cogently presented in the Canadian Brief. The other is the view of the United States which in this Brief will be presented in opposition to it.

The Canadian view (C.B., p. 14) is, in substance, this: That the right to inquire, to examine, to seize, to take into port, and to adjudicate are rights which do not come into existence until the right to board the vessel has been exercised and that the right to board can under no circumstances be exercised outside treaty waters. From this it follows that if the vessel has crossed the treaty line and is boarded on the open sea, the boarding cannot be regarded (no matter how considerably it may be accomplished) as the exercise of a right given by the treaty but must be branded as a step taken in the teeth of the provisions of the treaty. Such a step would be a violation of the British flag which might or might not be acquiesced in by the Sovereign. It follows, further, from this conception of the right conferred by the convention, that pursuit of any kind, hot or otherwise, is excluded by the very terms of the proposition. If the critical step is the boarding and if the boarding must take place inside the line, any pursuit of the fleeing vessel beyond the line must necessarily be in legal contemplation purposeless; and any damage done as an incident of pursuit becomes not "an improper or unreasonable exercise of the rights conferred", but an unfriendly act done without even color of right.

It is perhaps permissible to test the soundness of the Canadian view in each of three ways.

In the first place, it may be inquired in what sense "rights" can be said to have been conferred upon the United States if their exercise is dependent, as a practical matter, upon the consent of the master of the suspected vessel. If a vessel is hailed in treaty waters with a view to boarding and if the master of the vessel ignores the signal and makes for the open sea, one of two things is certain—either that he will cross the line and so terminate the "right" or that he will have to be prevented by force from crossing it until boarding has taken place. In the latter event the Canadian Brief raises (but does not dispose of) the question as to whether if, after the boarding, the treaty line is crossed, the substantive rights of inquiry, examination, etc. thereupon disappear. If the language of the convention is to receive the rigid construction required by the Canadian view, it is impossible to escape the conclusion that boarding even within the limit of treaty waters would have been (in the case supposed) altogether fruitless. It should seem, therefore, that unless the master of a suspected vessel voluntarily complies with the signal to stop and then facilitates boarding by the revenue officers, there is no recourse except to force and that this must be exerted so promptly and so decisively that not only boarding but inquiry, examination, and seizure can be consummated before the necessarily short distance to the treaty line has been traversed. It is a feature of the Canadian view that "hailing the vessel or commanding it to stop to be boarded is not enough" (C. B., p. 14). This means that the convention intends to attach no legal consequences to the signal to stop. According to this view, the United States has no right which is violated when, after signal, the vessel continues on its course or (as in the instant case) weighs anchor and runs away. Thus the United States gains no right except to board; and, in the



absence of voluntary cooperation by the master, the situations in which boarding could be accomplished inside the treaty waters are probably as one is to a hundred. If this is the extent of the "right" which Great Britain intended to confer upon the United States, it is scarcely an adequate consideration for the concession in the convention made by the United States in allowing British ships to have on board liquor under seal as sea stores or cargo while in United States ports or in its territorial waters.

In the second place, it is pertinent to inquire how far the Canadian view is consistent with the avowed purpose of the convention of "avoiding any difficulties which might arise" between the two countries. If the master of a British ship is guilty of no breach of duty when he ignores a signal to stop and makes for the open sea, the thing which the convention necessarily contemplates is a hostile naval maneuver so promptly and forcibly executed as inevitably to result in a grave menace to life and property. Consistently with the view of the United States (presently to be stated) it is indeed possible that the wilful disregard of treaty obligations by a fleeing ship may result in harm. The worst actually happened in the instant case. But, consistently with the Canadian view, no rights arise until boarding takes place, the flight of the escaping vessel is no breach of treaty obligation, and the officers of the United States are by necessary implication invited to use promptly such force as is necessary to prevent their "right" from vanishing. There can be no time for parley and no show of consideration. The distance from shore contemplated by the convention is seldom more than a dozen miles. The suspected vessel is likely (as in the instant case) to be some eight or more miles off shore when hailed. With only three or four miles to go, she is in effect invited by the convention to go

full steam ahead; and nothing but a war vessel of destroyer type is likely to be able to stop her and board her, examine and seize her before she has crossed the line. It is respectfully submitted that such an interpretation of the convention converts it into an instrument for creating difficulties rather than an agency for preventing them.

In the third place, the reasonableness of the Canadian view may be tested by rewriting the convention so that it will by express words provide for the results contended for in the Canadian Brief. Let it accordingly be supposed that section 3 of article 2 of the draft treaty submitted by His Majesty's Government in Canada had read as follows:

(2) The rights conferred by this article impose no obligation upon the part of a British ship to comply under any circumstances with a signal to stop and submit to boarding. If, after a signal is given when the British ship is within treaty waters, she can make her escape beyond the limit of those waters, boarding shall under no circumstances take place. If boarding is accomplished within treaty waters and the ship, continuing on her way, passes the limit of those waters, the master shall be under no duty thereafter to answer inquiries or to permit search. Any seizure of an escaping ship or any interference or threat of interference with her freedom of motion beyond said limits shall be deemed by His Majesty's Government an unfriendly act.

If the assumption be indulged that such a proposal could have been made by His Majesty's Government, the Commissioners are respectfully asked to concede the impossibility of its acceptance by the United States at the price (under the decision in the *Mazel Tov* case) of super-

seding its revenue legislation and (under the express terms of the convention) of making the liquor concession already referred to.

Over against the Canadian view the United States suggests a widely different conception of the rights conferred by the convention.

It is submitted that when Great Britain, by international contract, conferred upon the United States the right to board a British vessel Great Britain *ipso facto* imposed upon every merchant ship claiming the protection of the British flag the duty to facilitate the boarding and, as a first move in that direction, the duty to stop when hailed within treaty waters, or if at anchor when hailed (as in the instant case) to remain at anchor until after boarding and search. It is further submitted that if a British ship, after being hailed in territorial waters, disregards the signal and attempts to escape beyond their limits, her act in so doing is a violation of the obligation imposed by the treaty and is just as definitely a violation of British law as if she had failed to comply with any of the express provisions of the British Merchant Shipping Act. The legal obligation to stop and permit boarding is violated by the flight of the ship. When she crosses the line and enters the open sea she cannot, by her own wrong, thus free herself from that obligation. When pursued by the revenue cutter that hailed her and when again called upon to stop she has the option to discharge her obligation by complying or to continue on her course as a lawbreaker. If she adopts the latter alternative she may be dealt with, when overtaken, precisely as she might have been dealt with inside the treaty limit.

From what has just been said it necessarily follows that the right to board, when invoked by signal within the treaty limit, is a right which cannot be defeated by flight: when boarding is achieved, no matter where, it is a mere

consummation of the right which was exercised when the hailing took place.

It thus appears that the question before the Commissioners is not primarily whether the doctrine of hot pursuit, as such, is in international law an incident of any but territorial waters. The primary question is, What was the right conferred by treaty and what was the correlative obligation created by this particular international contract? If the Commissioners decide this primary question in accordance with the contention of the United States, the right of pursuit is seen to be a necessary corollary of the main proposition.

The reasonableness of the view of the United States may be subjected to the same tests which have been applied to the Canadian view.

The contention that a signal to stop given to a ship in treaty waters has definite and important legal consequences, is a contention which ascribes to the makers of the convention an intention to confer a right of practical value. If the right to signal, and to have the signal respected, is not a first step in the exercise of a right to board, then (from the point of view of the United States) the convention was not worth making. It will scarcely be contended by His Majesty's Government that the making of the treaty was a battle of wits in which Great Britain attained its objective and gave nothing of value in exchange.

In the next place, the view of the United States, if accepted, removes the incentive to flight and consequently tends to prevent international difficulties from arising. If the master of a suspected vessel knows that a right of asylum is afforded him by the open sea the temptation to make a dash for safety is for men of the mold of British skippers quite irresistible. The conduct of the master of the *I'm Alone* is typical and significant. If, however, he



knows that, being in default, he may be boarded wherever overtaken, he will not be likely to attempt a trans-Atlantic race. On the other hand, if revenue officers know that whatever is done must be done and consummated immediately, the measures which they are justified in taking become correspondingly harsh; whereas if, having signaled, they know that a right of extended pursuit arises there is no temptation to bring the ship to immediate terms. The Canadian view interprets the convention as a concession of the right to start a fight. The view of the United States ascribes to its makers a neighborly intention to cooperate in protecting British liberty and in preserving American law.

In the third place, let it be supposed that when the draft treaty was submitted by His Majesty's Government, the United States had proposed the addition of the following explicit statement:

If a vessel suspected of engaging in contraband traffic is discovered and hailed in the enlarged zone hereinbefore described, and escapes out of this zone, the authorities of the country exercising control over the zone in question may pursue the vessel beyond such zone into the open sea and exercise the same rights in respect of it as if it had been seized within the zone.

It is submitted that acceptance of this express declaration of what the United States believes to be necessarily implied could not well have been refused by a friendly neighbor. It is in fact the exact language of the Helsingfors convention signed by the eleven Baltic States (C. B., p. 15). These signatories are just as jealous of their rights as other nations are. They are no more disposed to make neighborly concessions to one another than Great Britain is disposed to make them to the United States. Indeed by deducing the right of pursuit in any particular

case from the terms of a specific contract (whether expressly stated or necessarily implied) it becomes unnecessary to discuss the abstract doctrine of hot pursuit. There are volumes of discussion of this doctrine. It has been considered and applied by courts and has been examined and discussed by writers of an authority ranging all the way from the undergraduate law student to authors of international reputation. When these discussions are examined it is found that controversy is most acute where the right of pursuit is sought to be derived from customary international law. It is from this point of view that the subject is regarded in the able Canadian Brief. In the instant case, however, it is unnecessary for the United States to make an appeal to general international usage, no matter how cogent such an appeal might be. The United States stands rather upon the proposition that the particular international contract under which this controversy arises confers the right of pursuit by an implication as necessary as if expressed in so many words.

In concluding the discussion of the Second Question it may be suggested to the Commissioners that the rigid and literal interpretation of the convention insisted upon in the Canadian Brief really amounts to a plea to the jurisdiction of the Commissioners. As already pointed out, if the Canadian view is sound the officers of the United States acted without color of authority when they pursued and sank the *I'm Alone* on the open sea. It is not a case in which, in exercising rights conferred, they acted unreasonably or improperly. Questions of that sort, consistently with the Canadian view, could arise only in respect of conduct where rights existed and might be exercised reasonably and properly, i. e., within treaty waters. No question of the reasonableness or propriety of things done in the exercise of a right can arise when or where there is *no* right. But the only jurisdiction conferred

upon the Commissioners is the consideration of claims that loss or injury has been suffered "through the improper or unreasonable exercise of the rights conferred by article 2 of this treaty". The language of the claim filed by His Majesty's Government (paragraphs 9, 13, C. B., p. 55) shows that the basic contention of the claimant is that the pursuit and sinking took place in the absence of any right whatever and that only if this basic contention is overruled does the question of improper and unreasonable exercise of rights arise. If the convention is to be construed narrowly as respects the rights granted the United States, the Canadian contention should logically be that it must be similarly construed respecting the jurisdiction of the Commissioners. Consistently with such a view the aid of the Commissioners never should have been invoked by His Majesty's Government. The claim should have gone either to the established Claims Commission, to a specially constituted board of arbitrators or to the Permanent Court of International Justice.

Consistently with the view of the United States the Commissioners have a wide and elastic jurisdiction to consider and make recommendations respecting every phase of the case—from the matter of ultimate American ownership of the vessel to the reasonableness and propriety of the conduct of the officers of the United States in exercising, as they did, rights necessarily conferred upon them by the treaty.

### *3. The Third Question*

This question is based upon the assumption that the Wolcott was acting properly in continuing upon the open sea a pursuit begun in treaty waters. The Canadian Brief makes no point of the fact that the sinking was accomplished at a point far beyond the limit of treaty waters

as distinguished from a point in their immediate neighborhood. Failure to raise an issue on this point is entirely in keeping with the candor that characterizes the Canadian Brief throughout. The authorities on this point are fairly represented by those quoted in the letter of the Secretary of State and appearing at page 39 of the Canadian Brief.

The Canadian contention respecting the Third Preliminary Question is twofold: first, that a deliberate and intentional sinking could not under any circumstances be justified and, secondly, that since the right given by the treaty was only to board the ship and look at papers, the sinking of the ship was a destruction of rights, not an exercise of them.

The United States submits that if once it be conceded that the right to pursue existed and that the incidents of the pursuit are as averred in paragraph 8 of the Answer filed by the United States, the factual questions of reasonableness and propriety answer themselves. It is of course true that the language of the convention describes a normal and peaceful process: i. e., boarding, inquiry, examination, seizure, return to port, and adjudication in accordance with law. The purpose of it all, however, was to terminate an illegal venture by the forfeiture of ship and cargo and, in some cases, by the punishment of the crew. The rights conferred were merely rights to take the several steps necessary to reach this final result. If the master of the ship wished the transaction to be carried forward as contemplated he should have remained at anchor and permitted boarding and search. When he violated a treaty obligation by taking flight, his conduct was consistent only with what in the instant case is the conceded fact—that his cargo was liquor intended to be smuggled into the United States. He chose flight as a substi-



tute for adjudication. Under such circumstances pursuit can have only two alternative objectives: one, the giving to the master of a reasonable opportunity to reconsider his course and to permit peaceful boarding; the other, if flight was persistent, the accomplishment, by sinking after ample warning, of what would have been accomplished through peaceful adjudication if the master had elected the lawful course.

As to the former branch of the Canadian contention, it is of course true that there is an element of deep solemnity in the mere suggestion of the intentional sinking of a British vessel. But British vessels carrying liquor to be smuggled into the United States are subject to the limitations prescribed by the convention; and if the skipper of such a vessel persists in his preference for sinking as against forfeiture, the inevitable result of his choice should not be made the subject of serious complaint.

It is suggested that the latter branch of the Canadian contention is vitiated by insistence upon the "letter that killeth". It is an application of the same method of approach that was followed in the discussion of the two earlier questions. It is submitted that the Commissioners should not be moved by an argument to the effect that the sinking of a self-confessed rumrunner was illegal because it involved destruction of the evidences of her guilt.

In harmony with the contentions above made was the conduct of the United States in omitting protest against the action of a Canadian patrol boat in firing upon the American ship *Siloam* and killing one of her crew. The Americans had been fishing in Canadian territorial waters and the vessel attempted to escape when hailed. The report of the incident (C.B., p. 141 *et seq.*) discloses at least as much aggressive action by the Canadian officials as was taken by the officers of the Coast Guard in the instant case.

On the whole it is respectfully submitted that the Commissioners should reach, upon each of the three preliminary questions, a conclusion in harmony with the contentions herein advanced on behalf of the United States.

Dated the 30th day of March, 1933.

GEORGE WHARTON PEPPER

*Agent for the United States*

Theodore S. Paul

Assistant to the Agent for the United States





# CLAIM OF THE BRITISH SHIP "I'M ALONE"

---

STATEMENT WITH REGARD TO THE CLAIMS FOR  
COMPENSATION SUBMITTED BY THE CANADIAN  
AGENT PURSUANT TO DIRECTIONS GIVEN  
BY THE COMMISSIONERS, DATED  
THE 30TH JUNE, 1933

Submitted on behalf of His Majesty's Government in Canada for  
the Joint Consideration of

The Honourable Willis Van Devanter  
and  
The Right Honourable Lyman Poore Duff

---

J. E. READ, Canadian Agent

---



OTTAWA  
J. O. PATENAUDE  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
1933





## TABLE OF CONTENTS

	PAGE
Joint Interim Report of the Commissioners, dated the 30th June, 1933.....	5
Note by the Canadian Agent.....	9
Particulars of the Claim.....	10
APPENDIX A—Statutory Declaration of George A. Rhuland, May 8, 1929, establishing value of hull, etc...	12
APPENDIX B—Statutory Declaration of Edson C. Sollows, May 8, 1929, establishing value of the engines, etc.....	13
APPENDIX C—Statutory Declaration of William T. Powers, May 6, 1929, establishing value of the heating plant, etc.....	14
APPENDIX D—Affidavit of Albert Underwood, September 12, 1929, establishing value of the radio equipment.	15
APPENDIX E—Affidavit of John Thomas Randell, September 29, 1929, establishing value of the stores, etc...	17
APPENDIX F—(1) Affidavit of John Thomas Randell, September 16, 1929, establishing value of cargo of fuel oil.	27
(2) Affidavit of John Thomas Randell, September 16, 1929, establishing value of the cargo.....	28
APPENDIX G—(1) Affidavit of Geo. J. Hearn, September 13, 1929, establishing amount of general expenses.	30
(2) Account for Professional Services and Disbursements of L. Phillips, K.C.....	32
(3) Account for Professional Services and Disbursements of L. Phillips, K.C.....	33
(4) Account for Professional Services and Disbursements of L. Phillips, K.C.....	33
(5) Account for Professional Services and Disbursements of L. Phillips, K.C.....	34
APPENDIX H—Affidavit of John T. Randell, April 13, 1929, establishing Captain Randell's claim for compensation, but not including General Compensation.....	34
APPENDIX I—Affidavit of John Williams, April 9, 1929, establishing his claim for compensation, but not including General Compensation.....	37

TABLE OF CONTENTS—*Concluded*

APPENDIX J—Affidavit of Jens Jansen, April 9, 1929, establishing his claim for compensation, but not including General Compensation.....	39
APPENDIX K—Affidavit of James Barrett, April 9, 1929, establishing his claim for compensation, but not including General Compensation.....	40
APPENDIX L—Affidavit of William Wordsworth, April 9, 1929, establishing his claim for compensation but not including General Compensation.....	41
APPENDIX M—Affidavit of Eddie Young, April 9, 1929, establishing his claim for compensation, but not including General Compensation.....	42
APPENDIX N—Affidavit of Chesley Hobbs, April 9, 1929, establishing his claim for compensation, but not including General Compensation.....	43
APPENDIX O—Affidavit of Edward Fouchard, April 9, 1929, establishing his claim for compensation, but not including General Compensation.....	44
APPENDIX P—(1) Statutory Declaration of Amanda Mainguy, August 21, 1929.....	45
(2) Translation of Statutory Declaration of Amanda Mainguy, August 21, 1929.....	51
(3) Affidavit of Andrew Daniel Watson, August 8, 1933.....	53

**JOINT INTERIM REPORT OF THE COMMISSIONERS  
DATED THE 30TH JUNE, 1933**

The Honourable the Secretary of State  
for the United States of America; and  
The Right Honourable  
The Minister of External Affairs for Canada.

**EXCELLENCIES:**

Willis Van Devanter and Lyman Poore Duff, the Commissioners appointed respectively by the high contracting parties pursuant to Article 4 of the Convention of the 23rd day of January, 1924, between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas and the President of the United States of America, beg leave to present the following interim report and recommendations.

In compliance with a direction given on the 28th of January, 1932, the agents and counsel of the high contracting parties respectively have submitted briefs and oral argument in relation to certain preliminary questions which are here set forth; and the Commissioners, in the exercise of their duty under the authority conferred upon them by the appointment aforesaid, have given and do give the answers hereinafter respectively appended to these questions:

The question numbered one is in the following terms:—

The first question is whether the Commissioners may enquire into the beneficial or ultimate ownership of the *I'm Alone* or of the shares of the corporation that owned the ship. If the Commissioners are authorized to make this enquiry, a further question arises as to the effect of indirect ownership and control by citizens of the United States upon the Claim; viz., whether it would be an answer to the Claim under the Convention, or whether it would go to mitigation of damages, or whether it would merely be a circumstance that should actuate the claimant Government in refraining from pressing the claim, in whole or in part.



The answer given to this question is as follows:—

The Commissioners think they may enquire into the beneficial or ultimate ownership of the *I'm Alone* and of the shares of the corporation owning the ship; as well as into the management and control of the ship and the venture in which it was engaged; and that this may be done as a basis for considering the recommendations which they shall make. But the Commissioners reserve for further consideration the extent to which, if at all, the facts of such ownership, management and control may affect particular branches or phases of the claim presented.

The question numbered two is in the following terms:—

The second question relates to the right of hot pursuit. Further, it has two aspects, and it is based upon the assumption that the averments in the Answer with regard to the location and speed of the *I'm Alone* are true. The question in its first aspect is whether the Government of the United States under the Convention has the right of hot pursuit where the offending vessel is within an hour's sailing distance of the shore at the commencement of the pursuit and beyond that distance at its termination. The question in its second aspect is whether the Government of the United States has the right of hot pursuit of a vessel when the pursuit commenced within the distance of twelve miles established by the revenue laws of the United States and was terminated on the high seas beyond that distance.

The answer given to this question is as follows:—

As respects the question in its first aspect, viz., whether the Government of the United States under the Convention has the right of hot pursuit where the offending vessel is within an hour's sailing distance of the shore at the commencement of the pursuit and beyond that distance at its termination,

the Commissioners are as yet not in agreement as to the proper answer, nor have they reached a final disagreement on the matter. The Commissioners, therefore, suggest that the proceeding go forward and that the evidence be produced in an orderly way, leaving the Commissioners free to give further consideration to the matter and to announce their agreement or disagreement thereon as the case may be.

The question in its second aspect need not be answered because the Government of the United States has now withdrawn so much of its answer as led to the propounding of that aspect of the question.

The question numbered three is in the following terms:—

The third question is based upon the assumption that the United States Government had the right of hot pursuit in the circumstances and was entitled to exercise the rights under Article 2 of the Convention at the time when the *Dexter* joined the *Wolcott* in the pursuit of the *I'm Alone*. It is also based upon the assumption that the averments set forth in paragraph eight of the Answer are true. The question is whether, in the circumstances, the Government of the United States was legally justified in sinking the *I'm Alone*.

The answer given to this question is as follows:—

On the assumptions stated in the question, the United States might, consistently with the Convention, use necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port the suspected vessel; and if sinking should occur incidentally, as a result of the exercise of necessary and reasonable force for such purpose, the pursuing vessel might be entirely blameless. But the Commissioners think that, in the circumstances stated in paragraph eight of the Answer, the admittedly intentional sinking of the suspected vessel was not justified by anything in the Convention.

Having thus answered the preliminary questions, the Commissioners have had under consideration the practical application of their answers to the future conduct of the case.

They, accordingly, make to the two Governments the following recommendations:—

*First:* that the agents be instructed by their respective Governments to prepare and submit to the Commissioners separate statements setting forth in detail the contentions of their respective Governments as to the ultimate beneficial interests in the vessel and in the cargo, together with specifications of the documents and witnesses relied upon to substantiate their respective contentions:

*Second:* that the agents be similarly instructed to submit to the Commissioners either a joint statement or separate statements (in either case specifically itemized) of the sums which should be payable by the United States in case the Commissioners finally determine that compensation is payable by that Government.

Upon compliance with the foregoing recommendations the Commissioners will notify the agents by what procedure the resulting issues of fact will be determined and upon such determination will make a final recommendation.

The Commissioners have the honour to be, Excellencies,

Your most humble, obedient servants,

WILLIS VAN DEVANTER.

LYMAN P. DUFF.

30th June, 1933.

## NOTE BY THE CANADIAN AGENT

1. In the Joint Interim Report of the Commissioners, the Agents were directed to exchange the itemized statements on the questions of compensation, with a view to an endeavour to come to an agreement on these questions in so far as it might be possible to do so. For this purpose a detailed statement of the particulars of the claim, itemized in accordance with the directions, has been prepared together with statutory declarations and affidavits in support of these particulars.

2. It will be observed that both the particulars and the supporting evidence are related to items of compensation which are liquidated in amount. In respect to most of the items there is also included a claim for general compensation for which specific amounts are given. The Mainguy claim it is true has an item listed as General Compensation, \$18,000, but it is in a different category from the other claims. The claim for general compensation is largely supported by the affidavits with regard to the earning power and capitalized values which are annexed.

With regard to the other claims for general compensation in respect to the ship and in respect to the master and crew, it is obvious that compensation restricted to the values of the specific items of property lost would be entirely inadequate. The delay intervening between sinking and payment; the circumstances under which the vessel was sunk, resulting in an arbitrary deprivation both of the owners and of the master and crew of all earning power for a substantial period of time; the immersion of the crew in the Gulf of Mexico under storm conditions and in circumstances of great peril; the arrest and placing in irons of the master and crew and the indignities which they suffered; and the effect upon their health, both nervous and physical, are all circumstances which two "well disposed advisers" would no doubt consider in determining what would be fair compensation in the circumstances.

It is assumed that, after exchange of statements as to compensation, there will be a conference of Agents, with a view to agreeing, if possible, upon a joint statement, for submission to the Commissioners.

3. For convenient reference, the statement of particulars is in tabulated form, and opposite to each item there is indicated a letter which refers to the appendices under which the relevant declarations or affidavits are set forth.

J. E. READ.



### PARTICULARS OF THE CLAIM

The particulars of the claim for compensation for loss or injury suffered by the *I'm Alone*, submitted by the claimant Government are as follows:—

	Particulars	Supporting Declarations and Affidavits.		
(1)	Claim submitted by the Eugene Creaser Shipping Company, Limited, a body corporate, incorporated under the laws of the Province of Nova Scotia, for compensation for the loss of the schooner <i>I'm Alone</i> :			
	Value of hull, including spars, booms, gaffs, locks and iron work, sails, standing rigging, running rigging for reefs, two anchors and chains .....	\$ 25,000 00	A	
	Value of engines, equipment, and accessories, electric light plant, bilge pumps .....	21,000 00	B	
	Value of heating plant, plumbing, cooking stove, fuel and water tanks, engine room telegraph, and other engine room accessories .....	2,033 50	C	
	Value of radio plant .....	3,935 00	D	
	Value of deck and engine-room stores, spare and consumable .....	6,078 02	E	
	Value of cabin dishes, cutlery, etc., for master's use .....	127 10	E	
	Value of provisions .....	768 88	E	
	Value of galley cooking utensils.....	176 75	E	
	General compensation.....	50,000 00		
(2)	Claim submitted by the said Eugene Creaser Shipping Company Limited			
	For the value of the cargo .....	125,457 00	F	
(3)	Claim submitted by the said Eugene Creaser Shipping Company Limited:			
	For general expenses arising out of the sinking, cost of repatriation of crew, and other costs incurred preceding the commencement of the proceedings .....	6,109 41	G	
	For legal expenses, including fees and disbursements .....	27,701 02	G	
(4)	Claim submitted by John Thomas Randell, a British subject, Master of the <i>I'm Alone</i> :			
	For compensation for loss of instruments and personal effects .....	2,906 00	H	
	General compensation .....	25,000 00		
(5)	Claim submitted by John Williams, a British subject, a member of the crew of the <i>I'm Alone</i> :			
	For compensation for loss of instruments and personal effects .....	500 50	I	
	General compensation .....	10,000 00		

Particulars	Supporting Declarations and Affidavits.	
(6) Claim submitted by Jens Jansen, a member of the crew of the <i>I'm Alone</i> :		
For compensation for the loss of personal effects and tools .....	\$ 348 00	J
General compensation .....	10,000 00	
(7) Claim submitted by James Barrett, a British subject, a member of the crew of the <i>I'm Alone</i> :		
For compensation for the loss of tools and personal effects .....	282 00	K
General compensation .....	10,000 00	
(8) Claim submitted by William Wordsworth, a British subject, a member of the crew of the <i>I'm Alone</i> :		
For compensation for the loss of personal effects .....	157 00	L
General compensation .....	10,000 00	
(9) Claim submitted by Eddie Young, a British subject, a member of the crew of the <i>I'm Alone</i> :		
For compensation for the loss of personal effects .....	249 50	M
General compensation .....	10,000 00	
(10) Claim submitted by Chesley Hobbs, a British subject, a member of the crew of the <i>I'm Alone</i> :		
For compensation for the loss of engineering tools and personal effects .....	573 50	N
General compensation .....	10,000 00	
(11) Claim submitted by Edward Fouchard, a member of the crew of the <i>I'm Alone</i> :		
For compensation for the loss of tools and personal effects .....	215 00	O
General compensation .....	10,000 00	
(12) Claim submitted by Amanda Mainguy, widow of the late Leon Mainguy, who was a French citizen of St. Pierre, Miquelon, and a member of the crew of the <i>I'm Alone</i> , and who was drowned at the time of the sinking of the <i>I'm Alone</i> :		
For compensation on behalf of herself and her three infant children, Henriette, Jeanne, and John, for the loss of personal effects..	185 00	P
General compensation .....	18,000 00	
Total .....	386,803 18	

## APPENDIX A

**Statutory Declaration of George A. Rhuland, May 8, 1929.**  
**ESTABLISHING VALUE OF HULL, ETC.**

Canada:  
 Province of Nova Scotia  
 County of Lunenburg. SS. }

IN THE MATTER of the sinking of the British Steamship *I'm Alone*, Official No. 150-960, of the Port of Lunenburg, Nova Scotia, by Revenue Cutters of the United States of America.

I, George A. Rhuland, of Lunenburg in the County of Lunenburg, do solemnly declare and state as follows:—

1. I am and have been for about 29 years last past, one of the partners of the firm of Smith & Rhuland, Shipbuilders, carrying on business at Lunenburg, aforesaid.

2. That in the year 1923 the said Steamship *I'm Alone* was built in and launched from the shipbuilding yards of the said firm of Smith & Rhuland, at Lunenburg, aforesaid.

3. That the cost of building the hull, supplying and fitting the spars, including booms and gaffs, blocks and iron work on the same was the sum of \$20,000 and the cost of the sails, standing rigging, running rigging and other ropes and two anchors and chains for the said Steamship was \$5,000 or thereabouts or in all the sum of \$25,000.

4. That the cost of replacing the hull, spars, blocks and other apparel of the said Steamship as described in the next preceding paragraph hereof, at present day prices, would be \$25,000 or over.

And I make this Solemn Declaration conscientiously believing the same to be true and knowing it to be of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the Town  
 of Lunenburg, in the Province  
 of Nova Scotia, this 8th day  
 of May, A.D. 1929.

WM. P. POTTER,

*A Notary Public in and for  
 the Province of Nova  
 Scotia.*

GEORGE A. RHULAND

My Commission is held "During Pleasure."

## APPENDIX B

Statutory Declaration of Edson C. Sollows, May 8, 1929.

ESTABLISHING VALUE OF THE ENGINES, ETC.

Canada:	}
Province of Nova Scotia	
County of Lunenburg. SS.	

IN THE MATTER of the Sinking of the British Steamship *I'm Alone*, Official No. 150,960, of the Port of Lunenburg, Nova Scotia, by Revenue Cutters of the United States of America.

I, Edson C. Sollows, of Liverpool, in the County of Queens, do solemnly declare and state as follows:—

1. I am the representative of the Canadian Fairbanks-Morse Limited for the Province of Nova Scotia and have had 21 years or more experience in the sale and installation of marine engines and equipment.

2. I am familiar with the motive power plant and installation of the said Steamship *I'm Alone* which consisted of two 100 B.H.P. crude oil Fairbanks-Morse engines, equipment and accessories.

3. That the said Steamship was also equipped with an electric lighting plant and bilge pumps.

4. That the cost of replacing the said engines, equipment and accessories, electric lighting plant and bilge pumps at present day prices would be \$21,000 or thereabouts.

And I make this Solemn Declaration conscientiously believing the same to be true and knowing it to be of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the Town  
of Digby, in the Province of  
Nova Scotia, this eighth day  
of May, A.D. 1929.

FRANK W. NICHOLS,  
*A Notary Public in and for  
the Province of Nova  
Scotia.*

EDSON C. SOLLWS

My Commission is held "During Pleasure."



## APPENDIX C

**Statutory Declaration of William T. Powers, May 6, 1929.**

**ESTABLISHING VALUE OF THE HEATING PLANT, ETC.**

Canada:  
Province of Nova Scotia  
County of Lunenburg, SS. }

IN THE MATTER of the sinking of the British Steamship *I'm Alone*, Official No. 150,960, of the Port of Lunenburg, Nova Scotia, by Revenue Cutters of the United States of America.

I, William T. Powers of Lunenburg, in the County of Lunenburg, do solemnly declare and state as follows:—

1. In the year 1923 I was one of the partners of the firm of Frank Powers (now Powers Bros. Limited), general hardware merchants, plumbers and heating engineers, carrying on business at Lunenburg, aforesaid, and I have knowledge of the business and affairs of the said firm at that time.

2. Between the 10th day of July, 1923, and the 9th day of October, 1923, the said firm of Frank Powers supplied and installed in the said steamship *I'm Alone*, a heating plant, plumbing, cooking stoves, fuel and water tanks, engine room telegraph and other engine room accessories.

3. That the cost of supplying and installing the said equipment was \$2,033.50 or thereabouts.

4. That the cost of replacing the said equipment would at present day prices be \$2,033.50 or thereabouts.

5. And I make this solemn declaration conscientiously believing the same to be true and knowing it to be of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the Town  
of Lunenburg, in the Province  
of Nova Scotia, this 6th day  
of May, A.D. 1929.

WM. P. POTTER,  
A Notary Public in and for  
the Province of Nova  
Scotia.

WILLIAM T. POWERS.

My Commission is held "During Pleasure."

## APPENDIX D

**Affidavit of Albert Underwood, September 12, 1929.**

**ESTABLISHING VALUE OF THE RADIO EQUIPMENT**

Province of Quebec:  
District of Montreal.

I, Albert Underwood, of the City of Montreal, residing at 4672 Mance Street, being duly sworn, depose and say:—

1. I am the Comptroller of Canadian Marconi Company, at Montreal;

2. The detailed statement hereto annexed, marked "A" and signed by me for identification is a true statement of the price of installation of the radio equipment on the Schooner *P'm Alone*, which equipment was supplied on November 24, 1925;

And I have signed:

Sworn before me at the City of  
Montreal, this 12th day of  
September, 1929.

(L.S.) LIONEL A. SPERBER.

*A Commissioner of the  
Superior Court for the  
District of Montreal.*

A. UNDERWOOD.

To CANADIAN MARCONI COMPANY Dr.

(Limited Liability)

MONTREAL, November 24, 1925.

S.O. No. S/C. 167.

Schooner *I'm Alone* and Owners,  
Yarmouth, N.S.

Terms: C.O.D.

Interest charged on overdue accounts

1 No. 1878 Y C 3 Set Complete with the following at	
\$3,800 net .....	\$3,800 00
1 Power Transformer.	
1 Motor Starter.	
1 Field Resistance.	
1 Motor Alternator.	
1 Ship A.T. 1.	
2 Pr. Brown L. R. Phones.	
1 Microphone.	
1 Main Switch.	
2 Screw plugs for connecting alternator Mains.	
6 Carbon Lamps 115 V. 32 C.P.	
10 Ft. H.T. Cable.	
1 Charging Board.	
1 ER. WD. 6/80 Battery.	
1 Burgess No. 2306 Battery 45 V.	
1 Steel H.T. Battery Box.	
1 Steel L.T. Battery Box.	
1 M.T. 1 Valve No. 5058.	
1 M.R. 1 Valve No. 1236.	
1 V 24 Valve.	
1 Q X Valve.	
1 M.T. 1 Valve (Spare) No. 5061, at \$75 net.....	75 00
1 M.R. 1 Valve (Spare) No. 1566 at \$60 net.....	60 00
	<hr/>
	\$3,935 00

Statement "A" referred to in the annexed affidavit of  
Albert Underwood.

(Sgd) A. UNDERWOOD.

EDH/IC

When Remitting or Referring to this Account Please Quote Invoice  
Number.

## APPENDIX E

Affidavit of John Thomas Randell, September 29, 1929.

## ESTABLISHING VALUE OF THE STORES, ETC.

Province of Quebec:

District of Montreal.

*Re: Aux. Schr. "I'm Alone"*

I, John Thomas Randell, presently residing at 648 Sherbrooke Street West in the City of Montreal and Province of Quebec, being duly sworn, depose and say:—

1. I was the Master of the auxiliary Schooner *I'm Alone* at the time of the sinking thereof by the United States Cutter *Dexter* in March 1929;

2. At the time of the sinking of the said vessel the list of deck and engine room stores, spare and consumable (and the prices thereof) then on board is given in detail in the Schedule "A" hereto annexed and signed by me for purposes of identification;

3. List of cabin dishes, cutlery, etc., for Master's use, on board said vessel at the time of the sinking, (and prices thereof) is contained in the Schedule "B" hereto annexed and signed by me for purposes of identification;

4. List of the provisions on board said vessel at the time of the said sinking, (and prices thereof) is contained in the Schedule "C" hereto annexed and signed by me for purposes of identification;

5. List of galley cooking utensils on board said vessel at the time of the said sinking, (and prices thereof) is contained in the schedule "D" hereto annexed and signed by me for purposes of identification;

6. The said schedules "A," "B," "C" and "D" are correct and the prices therein mentioned are the actual prices of the



various items listed; and all of the goods and articles so listed were on board said vessel at the time of the sinking thereof as aforesaid;

And I have signed:

Sworn before me at the City of  
Montreal, this 29th day of  
August, 1929.

LIONEL A. SPERBER,

A Commissioner of the  
Superior Court for the  
District of Montreal.

JNO. T. RANDELL

### LIST OF DECK AND ENGINE ROOM STORES, SPARE AND CONSUMABLE

This is page 1 of the Schedule "A" referred to in the annexed affidavit of John Thomas Randell. Jno. T. Randell L. A. Sperber CSC.	2	manilla mooring lines 4½ inch, 60 fms each..\$	130 00
	1	manilla towing hawser 6 inch, 60 fms.....	70 00
	1	coil manilla rope running gear, 3½ in., 120 fms.	130 00
	1	coil manilla rope running gear, 3 in., 120 fms.	130 00
	1	coil manilla rope running gear 2¼ in., 120 fms.	140 00
	1	coil manilla point line 19 thread.....	13 50
	½	coil hemp ratline line 19 thread.....	17 00
	1	spare foresail, new.....	436 00
	1	bolt No. 1 cotton canvas.....	70 00
	1	bolt No. 3 cotton canvas.....	65 00
	1	set awnings, new.....	55 00
	1	set hatch tarpaulins, new.....	48 00
	3	balls cotton sail twine.....	2 70
	1	lb. beeswax .....	35
	1	doz. seaming needles.....	3 00
	6	roping needles .....	2 00
	2	roping palms .....	1 20
	3	seaming palms .....	90
	1	Lignumvitae Fid.....	4 50
	1	sewing mallet .....	3 50
	1	serving board .....	2 50
	3	marline spikes.....	4 50
	6	hanks marline .....	3 00
	6	hanks houseline .....	3 00
	1	coil signal halyards.....	15 00
	4	four-lb. fishing lines.....	8 95
	2	cod jiggers .....	4 00
	1	Bliss taffrail log.....	35 00
	1	Harpoon Walker's log.....	25 00
	2	Bliss rotaters .....	13 50

LIST OF DECK AND ENGINE ROOM STORES, SPARE AND  
CONSUMABLE—*Continued*

2	log lines .....	\$	20 00
2	cork fenders .....		7 00
4	sets dory paddles, "or oars 12" .....		48 00
1	box distress rockets .....		11 50
1	doz. blue lights .....		5 00
1	doz. red lights .....		5 00
1	Veray pistol, 4 doz. cartridges .....		14 00
2	boat compasses .....		20 00
6	C.B. lanterns .....		10 50
2	doz. lantern globes .....		3 20
3	red globes .....		2 10
1	doz. lamp glasses, slip .....		3 00
2	doz. lamp wicks, 1 inch .....		50
2	axes, large .....		4 40
2	axes small boat .....		2 20
2	hand hammers .....		1 70
1	claw hammer .....		95
1	topping mall .....		2 75
1	shackle drift .....		4 00
1	carpenters tool chest, complete .....		40 00
1	treble block, 12 in .....		10 65
1	double block, 12 in .....		7 50
4	single block, 14 in .....		28 00
6	double block, 8 in .....		24 60
6	single block, 8 in .....		13 50
1	doz. small blocks, assorted .....		7 00
4	swatch blocks, 8, assorted .....		18 00
4	coir deck brooms .....		1 80
2	corn brooms .....		70
4	deck buckets, galvanized .....		3 00
2	caulking irons .....		1 90
1	making irons .....		1 00
2	caulking mallets .....		10 00
2	cwt. Portland cement .....		3 80
1	doz. wire rope clamps .....		3 36
2	lbs. chalk .....		40
1	doz. galvanized cleats, assorted .....		7 20
4	coir mats .....		4 80
28	lbs. caulking cotton .....		8 40
200	lbs. oakum .....		32 00
6	hardwood belaying pins .....		6 00
6	broom handles .....		1 80
2	gals. disinfectant .....		2 00
4	doz. sandpaper .....		2 00
2	pairs handcuffs .....		5 00
2	sounding leads, hand, 7 lbs .....		5 50
2	lead lines .....		8 00
1	deep sea lead, 27 lbs. and line .....		25 00

This is page 2  
of the Schedule  
"A" referred  
to in the  
annexed  
affidavit of  
John Thomas  
Randell  
Jno. T. Randell  
L. A. Sperber  
CSC.

LIST OF DECK AND ENGINE ROOM STORES, SPARE AND  
CONSUMABLE—*Continued*

1 Kelvin sounding machine, complete.....	\$ 175 00
6 Corbin padlocks .....	15 00
6 Yale padlocks .....	13 50
12 King links windlass driving gear.....	12 00
3 deck mops .....	3 60
28 lbs. nails, assorted.....	5 60
2 doz. hexagon nuts, assorted.....	1 40
1 large rigging screw.....	15 00
6 chisel scrapers .....	3 00
6 three-corner scrapers .....	5 40
1 doz. large shackles, galv.....	72 00
2 doz. small shackles, galv., assorted.....	29 50
4 shovels .....	4 40
1 monkey wrench .....	1 30
2 large galvanized turnbuckles.....	8 50
2 doz. assorted thimbles.....	2 00
6 doz. brass screws, assorted.....	90
4 lbs. copper tacks.....	75
28 lbs. galvanized spikes, 6 in.....	1 40
100 running feet, pitch pine 3½ x 4 in.....	15 00
6 gallons black paint.....	45 60
4 gallons enamel white paint.....	30 40
4 gallons deck paint.....	30 40
6 gallons French grey paint.....	45 60
25 gallons linseed oil.....	18 75
2 gallons turpentine .....	1 50
1 gallon patent driers.....	4 00
4 gallons bright varnish.....	40 00
3 gallons Pearl varnish.....	33 00
3 gallons aluminum paint.....	36 00
1 gallon shellac .....	4 00
½ gallon chrome yellow.....	3 80
2 lbs. blue paint .....	1 00
4 gals. mastine .....	10 00
2 gals. pine tar.....	80
6 brushes, paint, 3 in. flat.....	5 70
4 brushes, paint, 2 in. flat.....	3 40
3 brushes, paint, round.....	1 80
2 brushes, paint, small.....	1 00
2 handscrubbers .....	50
2 deck scrubbers, long handle.....	2 00
2 lbs. vermilion paint.....	3 50
2 lbs. gold paint.....	9 20
50 lbs. red lead, pure.....	7 50
50 lbs. white lead, pure.....	6 40
20 lbs. putty .....	2 25
400 ft. copper aerial wire.....	93 00
24 B. batteries, 45 volt.....	150 00

LIST OF DECK AND ENGINE ROOM STORES, SPARE AND  
CONSUMABLE—*Continued*

This is page 3 of the Schedule "A" referred to in the annexed affidavit of John Thomas Randell. Jno. T. Randell L. A. Sperber CSC.	1 dynamo .....	\$ 90 00
	2 doz. flashlight batteries.....	2 60
	2 three-cell flashlights, Everready.....	6 80
	4 doz. electric light bulbs, 15 and 25 watts.....	14 40
	2 portable lamps with 100 ft. flexible insulated cord, each .....	30 00 7 00
	4 portable lamps with plugs complete, in cabins.....	18 00
	1 doz. attachment plugs.....	1 20
	2 doz. fuse plugs.....	1 20
	200 feet lamp cord.....	11 00
	1 doz. brass sockets.....	2 50
	3 rolls rubber tape.....	75
	2 large mattresses, cabin.....	22 00
	2 small mattresses, cabin .....	12 00
	4 mattress covers, cabin .....	5 00
	4 eiderdowns, quilts, cabin .....	39 00
	8 wool blankets, cabin .....	20 00
	8 feather pillows, cabin .....	8 00
	2 doz. linen sheets, cabin .....	30 00
	2 doz. pillow cases, cabin .....	10 00
	1 doz. bath towels, cabin .....	7 00
	2 doz. face towels, cabin.....	4 00
	2 mattresses, single, foc'sle .....	8 00
	8 feather pillows, foc'sle .....	4 80
	8 mattress covers, foc'sle .....	4 00
	16 wool blankets, foc'sle .....	24 00
	16 pillowcases, foc'sle .....	14 00
	16 sheets .....	14 00
	1 chronometer .....	200 00
	1 pair binoculars .....	25 00
	1 spare ship's compass, 8" card.....	22 50
	1 pair dividers .....	1 00
	1 pair parallel rulers .....	3 75
	50 to 60 Coast Sheet General Admiralty Charts.....	27 00
	Newfoundland to Panama .....	1 25
	1 Brown's Nautical Almanac .....	10 00
	Quantity stationery.	
	1 Fairbanks Morse 6½ H.P. Engine for Radio & charging batteries, and spare parts for same .....	300 00
	3 bearing scrapers .....	2 75
	6 doz. assorted marline bolts & nuts .....	7 20
	10 square feet, brass metal sheeting.....	5 85
	20 square feet, galv. metal sheeting.....	22 00
	18 assorted spanners .....	19 80
	6 assorted shifting spanners .....	8 10
	1 large pipe spanner .....	1 50



LIST OF DECK AND ENGINE ROOM STORES, SPARE AND  
CONSUMABLE—*Concluded*

2 monkey wrenches .....	\$ 3 00
1 complete set taps and dies .....	18 00
1 complete set ratchet drills .....	7 50
1 ratchet .....	12 50
2 hacksaws .....	2 00
2 doz. blades, hacksaw .....	1 50
4 machine hammers, 2 large & 2 small.....	4 40
40 lbs. sheet lead .....	2 40
6 spare lubricators .....	15 00
4 oil feeders .....	2 00
2 oil cans, 5 gals .....	50
2 oil cans, 1 gal.....	40
1 hand cylinder oil pump .....	5 00
1 hand grease pump .....	3 50
2 salinometers .....	3 00
2 pairs pliers .....	1 50
6 lbs. graphite .....	3 00
2 doz. emery cloth .....	1 60
2 doz. files, assort. flat, 8" to 18".....	6 00
1 doz. files, assort. round, 8" to 16".....	4 20
6 rattail files, assort, 6" to 12".....	2 10
2 jackscrews, large .....	80
2 jack knives .....	1 60
20 ft. rubber hose, nozzle & couplings (6 clamps for same) .....	7 30
50 lbs. sal. soda.....	1 50
2 doz. sponge cloths .....	8 00
200 lbs. white cotton waste .....	30 00
4 doz. washers, assorted .....	50
2,400 gals. distillate fuel oil .....	318 00
24 steel drums .....	72 00
500 gals. lubricating oil, extra heavy.....	425 00
100 gals. coal oil .....	22 00
150 gals. gasoline .....	45 00
60 lbs. cup grease .....	12 50
10 gals. heavy oil .....	16 00
1 gal machine oil .....	1 80
6 tins 3 in 1 oil.....	3 60
4 gals. engine paint, black .....	21 00
4 gals. aluminum paint .....	28 00
4 gals. white, outside .....	16 00
50 feet piping, various, galv.....	10 00
20 feet piping brass .....	4 00
Large quantity of packing, Grummetts, spare cylinder heads, main bearings, top end bearings, parts for pumps, etc., for main engines and auxiliaries, valued at more than \$1,000 .....	1,000 00

This is page 4  
of Schedule  
"A" referred  
to in the  
annexed  
affidavit of  
John Thomas  
Randell.  
Jno. T. Randell  
L. A. Sperber  
C-C.

---

\$6,073 02

# LIST OF CABIN DISHES, CUTLERY, ETC., FOR MASTER'S USE

This is  
Schedule "B"  
referred to in  
the annexed  
affidavit of  
John Thomas  
Randell.  
Jno. T. Randell  
L. A. Sperber  
CSC.

6 soup plates, china	}	.....\$	25 00
6 dinner plates, china			
6 tea plates, china			
6 cups & saucers, china			
1 butter dish, china			
1 sugar basin, china	}		
6 fruit dishes, glass			1 00
6 glass tumblers,			1 00
6 wine glasses, port			1 10
6 wine glasses, liqueur			85
6 wine glasses, cocktail			1 10
2 china milk jugs			1 80
2 water bottles			7 00
2 wine decanters			9 50
6 table knives, silverplate			3 25
6 table forks, silverplate			3 25
6 soup spoons, silverplate			4 20
6 tea spoons, silverplate			2 15
6 dessert spoons, silverplate			3 90
1 soup tureen & ladle, silverplate			9 50
2 vegetable or chafing dishes, silverplate			8 00
1 cruet stand, silverplate			4 75
6 cereal dishes			3 00
2 linen tablecloths			19 00
1 coloured table cloth			6 00
6 serviettes, linen			3 00
1 jam dish and spoon			2 00
1 large fruit dish			2 00
1 food basket			1 00
1 tray			3 75

\$127 10

## LIST OF PROVISIONS

This is page 1  
of schedule  
"C" referred  
to in the  
annexed  
affidavit of  
John Thomas  
Randell.  
Jno. T. Randell  
L. A. Sperber  
CSC.

2 cases gall apples	6 50
2 cases blueberries	10 00
2 cases apricots	7 50
2 cases peaches	10 00
2 cases pears	7 00
2 cases pineapples	12 00
3 cases beans	15 00
2 cases wax beans	6 00
1 case carrots	4 00
3 cases corn	9 00
3 cases peas	9 00
1 case spinach	3 50
3 cases tomatoes	13 30

LIST OF PROVISIONS—*Continued*

2 doz. tin lobsters.....	\$ 5 25
3 cases salmon .....	24 00
2 cases sardines .....	11 00
3 doz. tins shrimps.....	6 75
2 cases clams .....	9 50
1 barrel pilot biscuits.....	6 50
2 barrels flour .....	19 00
1 barrel pork .....	42 00
1 barrel beef .....	28 00
2 cases corned beef.....	32 00
2 cases roast beef.....	32 00
1 case ox tongues .....	24 00
1 case lunch tongues.....	26 00
1 case corn flakes.....	3 00
1 case cream of wheat.....	3 90
1 case grape nuts .....	3 80
1 case rolled oats .....	4 60
3 pkts. alspice .....	1 03
$\frac{1}{2}$ case baking powder.....	7 40
50 lbs. pearl barley.....	2 80
1 sack white beans.....	12 50
1 doz. bicarbonate soda.....	1 10
3 lbs. cocoa .....	1 60
10 lbs. cornstarch .....	1 20
1 case corn syrup .....	4 25
1 doz. curry powder.....	5 40
1 doz. custard powder .....	1 60
1 doz. pkgs. egg powder.....	2 75
1 case buckwheat flour .....	5 25
6 bottles assorted essences.....	4 50
50 lbs. jams, assorted .....	11 50
50 lbs. marmalade .....	9 75
4 doz. jelly powders, assorted.....	2 00
20 lbs. macaroni .....	2 10
1 doz. French mustard.....	3 00
4 cases milk, evaporated.....	26 00
12 tins Demolco .....	3 00
2 lbs. nutmeg .....	1 80
1 gal. olive oil .....	3 75
1 bag green peas.....	9 00
20 lbs. orange, lemon and citron peel.....	6 50
4 lbs. black and white pepper.....	2 40
4 doz. assorted pickles .....	14 40
100 lbs. rice .....	6 25
1 case shaker salt .....	1 75
10 bags cooking salt.....	1 00
1 doz. chutney sauce .....	6 00
1 doz. Worcester sauce.....	1 50

LIST OF PROVISIONS—*Concluded*

3 doz. tomato ketchup .....	\$ 4 50
1 doz. H.P. sauce.....	3 75
2 cases soups assorted.....	14 00
300 lbs. granulated sugar.....	18 00
100 lbs. cube sugar.....	7 00
10 lbs. tapioca .....	1 20
20 lbs. vermicelli .....	2 10
1 doz. bottles vinegar.....	2 75
3 hams, large .....	15 00
50 lbs. bacon .....	20 00
20 lbs. Bologna sausages.....	4 80
1 case Oxford sausages.....	19 20
25 lbs. prunes .....	3 50
25 lbs. raisins .....	3 25
25 lbs. currants .....	2 75
1 case eggs (12 doz.).....	6 00
6 sacks potatoes .....	9 00
100 lbs. onions .....	7 50
1 gross matches, case.....	11 20
1 case Old Dutch cleanser.....	5 50
1 case Bon Ami, cakes.....	5 35
1 case Gillets lye .....	5 75
1 doz. Brasso .....	2 75
1 case laundry soap .....	4 50
1 case carbolic soap .....	5 75
2 doz. toilet soap .....	3 60
Fresh fruit .....	5 00
30 lbs. fresh meat .....	9 00
Ice, $\frac{1}{2}$ ton .....	5 00
Fresh vegetables .....	3 00

---

 \$768 88

## LIST OF GALLEY COOKING UTENSILS

1 doz. dinner plates .....	\$ 2 75
1 doz. soup plates .....	2 40
1 doz. tea plates .....	2 00
1 doz. cereal dishes .....	1 75
1 doz. fruit dishes .....	1 00
1 doz. soup bowls .....	2 40
1 doz. enamel soup plates.....	3 00
1 doz. enamel dinner plates.....	3 00
1 doz. enamel mugs .....	3 60
1 doz. cups and saucers.....	6 00
1 enamel milk jug, large.....	1 00
1 enamel sugar basin.....	1 40
1 enamel butter dish .....	85
2 china milk jugs .....	80

This is page 2  
of schedule  
"C" referred  
to in annexed  
affidavit of  
John Thomas  
Randell.  
Jno. T. Randell  
L. A. Sperber  
CSC.

This is page 1  
of schedule  
"D" referred  
to in annexed  
affidavit of  
John Thomas  
Randell.  
Jno. T. Randell  
L. A. Sperber  
CSC.



LIST OF GALLEY COOKING UTENSILS—*Continued*

2 china sugar basins.....	\$ 1 90
2 china butter dishes .....	2 00
2 doz. table knives .....	9 60
2 doz. table forks.....	9 00
2 doz. soup spoons.....	5 00
2 doz. tea spoons .....	6 00
1 carving knife and fork.....	2 00
2 china teapots .....	2 30
1 large enamel teapot.....	3 00
1 large enamel coffeepot .....	2 10
1 coffee percolator, large .....	1 50
2 white metal water kettles.....	7 50
2 five gal. boilers, enamel.....	7 00
2 three gal. boilers, enamel.....	5 50
1 large steamer, enamel .....	6 00
4 saucepans, assorted, enamel.....	4 95
2 large frying pans .....	1 00
2 small frying pans .....	80
6 baking tins .....	2 70
2 large baking pans .....	1 00
2 large roast pans .....	1 00
2 sets cookie and cake pans.....	1 20
12 pie dishes .....	1 20
1 soup tureen, enamel.....	3 00
2 soup ladles, enamel .....	40
1 butcher's knife .....	2 00
1 cook's fork, large .....	25
1 potato knife .....	15
1 bread knife .....	25
1 fruit knife .....	25
1 egg beater .....	15
1 nutmeg grater .....	10
1 electric toaster .....	4 75
1 grill .....	1 75
1 pastry roller .....	60
2 salt castors .....	30
2 pepper castors .....	30
1 large bread tin .....	2 50
1 large cake tin.....	2 75
12 egg cups .....	60
1 large flour tin .....	2 50
1 tea canister .....	1 00
1 coffee canister .....	1 00
1 large sugar tin .....	70
2 large cook's spoons .....	1 50
1 steel .....	1 35
2 pudding moulds .....	1 30
6 round enamel pudding dishes .....	2 40

LIST OF GALLEY COOKING UTENSILS—*Concluded*

	1 large slop can with cover.....\$	2 50
	3 galvanized buckets .....	1 80
	1 large mixing pan, enamel.....	1 25
	2 small basins, enamel.....	70
	1 wash basin, enamel .....	60
	2 wash dish basins or pans, tin.....	2 00
	1 wash dish mop .....	25
	2 deck mops .....	80
	2 corn brooms .....	90
	1 polishing mop, O'Cedar,.....	1 40
	1 white oilcloth for table.....	3 00
	2 coloured table cloths .....	4 00
	1 doz. dish towels .....	1 50
	1 doz. glass towels .....	2 00
	1 doz. hand towels .....	4 80
	6 roller towels, crash .....	1 80
		<hr/>
		\$176 75

This is page 2  
of schedule  
"D" referred  
to in annexed  
affidavit of  
John Thomas  
Randell.  
Jno. T. Randell  
L. A. Sperber  
CSC.

## APPENDIX F

(1) Affidavit of John Thomas Randell, September 16, 1929,  
establishing value of cargo of fuel oil.

Province of Quebec:  
District of Montreal.

I, John Thomas Randell, presently of the City of Montreal, in the Province of Quebec, residing at 2055 Aylmer Street, being duly sworn, depose and say:—

1. I was the Master of the Auxiliary Schooner *I'm Alone* at the time of the sinking thereof by the United States Revenue Cutter *Dexter* in March, 1929;

2. In addition to the cargo of liquor, there were on board the said schooner at the time of the sinking, fifty drums of distillate fuel oil of the value of four hundred and fifty-seven (\$457.00) dollars;

And I have signed:

JNO. T. RANDELL.

Sworn before me at the City of Montreal,  
this 16th day of September, 1929.

(L.S.) LIONEL A. SPERBER.

*A Commissioner of the Superior Court for  
the District of Montreal.*

(2) Affidavit of John Thomas Randell, September 16, 1929,  
establishing value of the cargo.

Province of Quebec:  
District of Montreal.

I, John Thomas Randell, presently of the City of Montreal, in the Province of Quebec, residing at 2055 Aylmer Street, being duly sworn, depose and say:—

1. I was the Master of the Auxiliary Schooner *I'm Alone* at the time of the sinking thereof by the United States Revenue Cutter *Dexter* in March, 1929;

2. The goods on board the said schooner at the time of the sinking as aforesaid were:—

- 1 case Carta de Oro Rum—2 gallons,
- 1 case Cherry Brandy—2 gallons,
- 1 cask rum—10 gallons,
- 50 demijohns rum—50 gallons,
- 5 bales rum (10 demijohns each)—50 gallons,
- 300 cases Johnny Walker, Black Label, Whisky,
- 1,000 cases William Penn Whisky (in pints),
- 1,500 cases William Penn Whisky (in quarts).

3. The value of the said goods on the high seas at the place where the said schooner was sunk was one hundred and twenty-five thousand (\$125,000.00) dollars;

And I have signed:

JNO. T. RANDELL.

Sworn before me at the City of Montreal,  
this 16th day of September, 1929.

(L.S.) LIONEL A. SPERBER,

*A Commissioner of the Superior Court for  
the District of Montreal.*

Chap. 92 Sec. 39 C. L.

Agent's Name.....Master.....

## PORT OF BELIZE—ENTRY OUTWARDS

No. \_\_\_\_\_

Rig....Aux Schooner.....Ship's Name....I'm Alone.....

If British, name of Port of her Registry	If Foreign, name of country to which she belongs	Tonnage	Number of Men	Master's Name	Port of Destination
British	—	90	8	Randell	Hamilton Bermuda

Date of Entry Mch. 6, 1929.

JNO. T. RANDELL, Master or Agent.

## PORT OF BELIZE.

## CONTENT

Ship's Name and Destination	Tonnage	If British, port of Registry; If Foreign the country	No. of Crew	Name of Master	No. of Passengers
I'm Alone Hamilton Bermuda	90	British	8	J. Randell	—

Marks and No. of packages	Quantity and Description of Goods	VALUE	SHIPPERS
C.M. & S. 455/9	√ 1 c/- Costa Oro Rum 2 glns.	10.50)	C. Melhado & Sons
	√ c/- Cherry Brandy 2 glns.	10.25)	
	1 cask 10 glns. Rum 10 glns.	31.50	
R.	√ 50 d'johns Rum 50 glns.	135.00)	
	(N.B. 10 d'johns short shipped)		
C.M. & S.	√ 5 Bales ea 10 d'johns Rum 50	157.00)	
	√ 300 c/J. W. Whiskey Blk		
	√ 14 bots out 597.67	3,321.00)	
C.M. & S. Belize	√ 1000 c/s Wm. Penn Whiskey		
	flks 2,400.00	13,500.00)	
	√ 1500 c/s do bots 3600.00	22,500.00)	C 1184

Certified to be a true copy of original Content on file. Witness my hand and the seal of the Custom House this 9th day of September, 1929.

R. ——— WILSON, Collector of Customs.

I do declare that the above Content is a true account of all goods  
above described, shipped or intended to be shipped on board  
the above-named ship, and correct in all particulars,

JNO. T. RANDELL, Master.

Signed and declared this 12th day of March, 1929 before me

ED. L. YSAGUIRRE } Collector of Customs.



## APPENDIX G

**(1) Affidavit of Geo. J. Hearn, September 13, 1929, establishing amount of general expenses.**

Province of Quebec:  
District of Montreal.

I, George J. Hearn, of the City of Montreal, residing at 319 Wilson Avenue, being duly sworn, depose and say:—

1. I am one of the shareholders of the Eugene Creaser Shipping Company Limited, owners of the *I'm Alone* at the time of the sinking thereof in March, 1929, and have personal knowledge of the matters hereinafter alleged;

2. Attached to this affidavit is a statement marked exhibit "A," covering certain expenses incurred as a result of the sinking of the said vessel, and more particularly expenses incurred on behalf of the Master and crew thereof, and the said statement is correct;

3. The items in the said statement, exhibit "A" dealing with my own travelling expenses were incurred for the purpose of obtaining the necessary evidence to His Majesty's Government:

And I have signed:

Sworn before me, at the City of  
Montreal, this 13th day of  
September, 1929.

LIONEL A. SPERBER,

*A Commissioner of the  
Superior Court for the  
District of Montreal.*

GEO. J. HEARN

RE: AUX. SCHR. *I'M ALONE*

STATEMENT *re* expenses incurred on behalf of Master and Crew after sinking of the vessel and up to the arrival in Nova Scotia, including wages.

To Master and 1st Mate for expenses of crew for sustenance and board of two coloured seamen, and incidental expenses .....	\$ 1,105 00
Hotel charges for Master and five white members of crew at New Orleans.....	243 90
Clothing bill for Master and crew at New Orleans.....	421 00
Five tickets to Montreal from New Orleans.....	359 85
Advanced to 1st Mate for expenses en route.....	100 00
Ticket, Master, New Orleans to New York.....	67 95
Cash advanced to Master for sustenance, etc.....	100 00
Two tickets, New Orleans to Belize, B.H., for coloured seamen .....	116 00
Cash advanced to crew, expenses to Belize, B.H.....	20 00
Undertaker's expenses a/c Leon Maingoy, at New Orleans.	378 00
Cost of forwarding body of Leon Maingoy to St. Pierre-Miquelon .....	183 14
Export clearance charges for body.....	5 00
Total Master's expenses, New Orleans to Liverpool, N.S., via New York.....	328 00
Master's wages Mar. 21st to Apr. 30, 1 month 10 days, at \$400 .....	533 00
To clothing for 1st mate and crew at Montreal.....	199 00
Expenses of crew in Montreal on way to Halifax, and transportation to respective destinations.....	279 60
To fare, French seaman, Halifax to St. Pierre-Miquelon..	16 12
To board and lodging for 3 men at Halifax, N.S.....	52 70
To Mate's wages, Mar. 21 to April 30, at \$150 per month..	200 00
To 1st Engineer's wages, Mar. 21 to April 30, at \$200 per month .....	266 66
To 2nd Engineer's wages, Mar. 21 to April 30, at \$125 per month .....	166 66
To cook and steward's wages, Mar. 21 to April 30, at \$125 per month .....	166 66
To 3 seamen's wages, Mar. 21 to April 30, at \$65 per month	259 48
To travelling expenses of G. J. Hearn, to Ottawa, April 8, 1929 .....	49 75
To travelling expenses of G. J. Hearn, Halifax, April 10..	100 00
To hotel expenses (Lord Nelson Hotel), Halifax, G. J. Hearn, April 21.....	79 22
To travelling expenses of G. J. Hearn, Halifax, May 22..	150 00
To travelling expenses of G. J. Hearn, Halifax, June 1...	50 00
To travelling expenses and hotel, July 11-17, Halifax....	91 06
	<hr/>
	\$ 6,109 41

This is the exhibit "A" referred to in the annexed affidavit of George J. Hearn, dated September 13, 1929.

GEO. J. HEARN.

(2) Account for Professional Services and Disbursements of  
L. Phillips, K.C.

521 POWER BUILDING,  
107 CRAIG STREET WEST,  
MONTREAL, P.Q., July 31, 1933.

EUGENE CREASER SHIPPING CO. LIMITED,

In account with

L. PHILLIPS, K.C.

1929	<i>Re: I'm Alone</i>	
April	Long distance 'phones to Ottawa, included in item below, with New Orleans calls, Telegrams to New Orleans, <i>re crew</i> , etc., and telegrams to Halifax, <i>re affidavits re ownership</i> .....	6 09
	Long distance 'phones to attorney in New Orleans, <i>re obtaining release of Captain and crew</i> , etc. ....	31 40
Apr. 19	Expenses trip to Ottawa, for conference with Under-Secretary of State for External Affairs .....	25 00
Aug. 21	Expenses trip to Ottawa for conference with Mr. J. E. Read, of Department of External Affairs .....	25 00
1930		
Mar. 6	Expenses trip to Ottawa for conference with Mr. J. E. Read.....	25 00
8	Expenses trip to Ottawa for further conference with Mr. Read, and Mr. Aimé Geoffrion, Canadian counsel .....	25 00
Jul. 13	Telegram and Long Distance 'phones to Under-Secretary of State for External Affairs..	1 40
1932		
Jan. 5	Expenses trip to Ottawa for conference with Mr. Read (two days).....	31 35
Mar. 11	Expenses trip to Ottawa for further conference with Mr. Read .....	25 00
21	Telegram to Aimé Geoffrion, in Ottawa.....	88
Jun. 3	Attendance in Toronto, and long conferences with Mr. Tilley and Mr. Geoffrion, Canadian Counsel, expenses .....	50 00
Nov. 4	Expenses trip to Ottawa for conference with Mr. Read. ....	25 00
1933		
May 6	Expenses trip to Ottawa for conference with Mr. Read .....	25 00
Jun. 27	Long distance 'phone to Mr. Read, Ottawa....	1 60
29		
&		
30	Expenses attendance in Ottawa, <i>re sittings of Arbitrators (two days)</i> .....	50 00

---

\$372 72

**(3) Account for Professional Services and Disbursements of  
L. Phillips, K.C.**

521 POWER BUILDING,  
107 CRAIG STREET WEST,  
MONTREAL, P.Q., July 31, 1933.

EUGENE CREASER SHIPPING CO. LIMITED,

In account with

L. PHILLIPS, K.C.

*Re: I'm Alone*

To estimated value of services to be rendered in  
respect to prosecution of this claim from this date  
to completion ..... \$5,000 00

**(4) Account for Professional Services and Disbursements of  
L. Phillips, K.C.**

521 POWER BUILDING,  
107 CRAIG STREET WEST,  
MONTREAL, P.Q., July 31, 1933.

EUGENE CREASER SHIPPING CO. LIMITED,

In account with

L. PHILLIPS, K.C.

1929	To being retained by Mr. G. J. Hearn, of your Company,
March	following sinking of <i>I'm Alone</i> ,
29	
to	To representations being made to the Canadian Government
1933	respecting illegality of sinking,
July 31	To conferences with duly accredited officials of the Depart-
	ment of External Affairs, and with counsel retained by
	the Canadian Government <i>re</i> prosecution of claim,
	To further conferences with respect to filing of the Cana-
	dian Brief, and studying Answer of the American Gov-
	ernment,
	To preparation and submission of the necessary data in sup-
	port of Canadian Government contention, supplying
	proof <i>re</i> value of boat and cargo, looking after confer-
	ences with members of crew in acquisition and sub-
	mission of data in support of Canadian contention,
	To attendances in Ottawa with respect to this matter at
	intervals during period of approximately four years,
	To conferences with clients; and examination of the law
	and facts of the case;

In all: \$20,000 00



(5) Account for Professional Services and Disbursements of  
L. Phillips, K.C.

621 POWER BUILDING,  
107 CRAIG STREET WEST,  
MONTREAL, July 31, 1933.

EUGENE CREASER SHIPPING CO. LIMITED,

In account with:

L. PHILLIPS, K.C.

*Re: I'm Alone*

To professional services rendered by Halifax correspondents, Messrs. Burchell, Smith, Parker & Fogo .....		\$2,000 00
<i>Disbursement Account of Burchell &amp; Co.</i>		
Registrar of Shipping .....	\$ 1 02	
Travelling expenses .....	166 70	
Telegrams long distance and local phones, exchange and postage .....	56 68	
Ticket to St. Pierre .....	16 12	240 52
Mr. Patterson, Shipyards .....	50 00	
Travelling expenses .....	16 00	
Certificate .....	2 00	
Telegraph, Telephones and Postage, etc. ....	19 78	87 78
		<hr/>
		\$2,328 30

## APPENDIX H

Affidavit of John T. Randell, April 13, 1929.

ESTABLISHING CAPTAIN RANDELL'S CLAIM FOR COMPENSATION BUT NOT INCLUDING GENERAL COMPENSATION

UNITED STATES OF AMERICA

State of Louisiana	}	S.S.
Parish of Orleans		
City of New Orleans		

Before me, the undersigned authority, personally came and appeared John Thomas Randell, who being first duly sworn deposes and says:

That he was the Master of the British Auxiliary Schooner *I'm Alone* prior to and on the 22nd day of March, 1929, the date

the said vessel was sunk by the United States Coast Guard Cutter *Dexter*, and that the following is a list with their respective values of the personal effects belonging to said affiant, that was on board the said vessel at the said time of her sinking as aforesaid, to wit:—

1 Star Sextant with Wollaston Prism.....	\$ 175 00
1 Sextant .....	50 00
1 Chronometer .....	300 00
1 Pair parallel rulers .....	10 00
2 Pair dividers .....	3 00
1 Course protractor .....	3 00
Navigation Books including Noris Epitome, Bowditch, Leckys Wrinkles, Azimuth Tables, Johnsons Cloudy Weather, Bairnsons Ex-Meridian, Martillis Method, Signal Books, Pilot Books, Nautical and Tide Tables and many other books on navigation and ship con- struction .....	50 00
1 Polaris .....	40 00
1 Pair Zeiss Prism Binoculars.....	85 00
1 Pair night glass binoculars.....	25 00
2 Ever-ready flashlights.....	8 00
1 Big Ben alarm clock.....	3 50
1 Large Jack knife .....	4 50
1 Double breasted naval uniform suit.....	120 00
1 Mess naval uniform suit .....	120 00
6 Mess jackets naval uniform white.....	24 00
1 Pair fine blue serge pants for naval uniform mess suit..	15 00
11 White uniform suits.....	77 00
1 Uniform cap (Commanders).....	15 00
2 Pair shoulder straps .....	10 00
1 Dinner jacket suit .....	75 00
1 Full dress suit .....	85 00
1 Set miniature decorations and medals.....	5 00
1 Doz. gold plated uniform buttons.....	6 00
6 White cap covers corded .....	6 00
2 Suits blue serge (2 pairs pants) .....	160 00
1 Light rain and spring coat.....	35 00
1 Heavy overcoat .....	45 00
1 Panama hat .....	15 00
1 Felt hat .....	8 00
1 Crush opera hat .....	11 00
2 Cloth caps .....	5 00
1 Pair patent leather dress shoes.....	8 50
2 Pair shoes (brown and black) .....	18 00
1 Pair buckskin shoes (white) .....	6 50
1 Pair fine shoes (white).....	4 50
1 Pair canvas shoes (white) .....	2 50

1 Pair bedroom or house shoes .....	3 50
6 Dress shirts (evening).....	30 00
8 Broadcloth shirts .....	36 00
1 Dozen dress collars wing linen.....	6 00
15 Soft collars Van Huesen and Arrow.....	5 00
6 Ties assorted .....	15 00
Tie and handkerchief case.....	5 00
2 Dozen handkerchiefs, linen and silk .....	10 00
18 Pair silk socks, black, white and grey .....	12 00
3 Suits Wolsey heavy wool underwear at \$14 .....	42 00
3 Suits fine Wolsey combination at \$12.....	36 00
3 Suits pajamas .....	10 50
Union suits .....	15 00
1 Fine leather collar box.....	4 50
4 Large Turkish bath towes.....	6 00
3 Khaki flannel working shirts.....	7 50
6 Pair heavy wool socks.....	9 00
3 Pair Khaki Moleskin pants.....	10 50
1 Windbreaker .....	6 50
1 Sheepskin coat .....	25 00
1 Long rubber coat.....	9 50
1 Pair red rubber hip boots.....	9 00
1 Souwester .....	2 00
1 Worn blue serge suit.....	15 00
1 Special steel uniform case.....	50 00
2 Large solid English leather suitcases.....	70 00
1 Large solid English leather attache case.....	12 50
2 English Morocco leather note and letter holders.....	15 00
1 New Portable Remington Typewriter.....	86 00
1 Set Ebony brushes in case silver monogram.....	25 00
Shaving outfit and toilette accessories.....	25 00
Stationery various including 500 sheets letter paper.....	10 00
Parker Duofold Pen and Pencil.....	17 50
1 Gold 17 Jewel Waltham Watch.....	95 00
1 Gold medallion watch fob.....	12 00
Masonic Regalia .....	25 00
2 Hand painted photographs with sterling silver frames...	22 00
Photographic supplies and developing material.....	20 00
1 Colt revolver 45 long.....	25 00
1 Rifle Danish Mauser.....	35 00
Rifle ammunition .....	12 50
Handworked table centre and strip.....	10 00
1 Sterling silver monogram cigarette lighter.....	5 00
1 Small portable steel cash and letter box.....	10 00
1 Pair gold rimmed glasses and 1 pair horn rimmed glasses.	30 00
1 Case drawing instruments.....	17 50
1 Set gold cuff links and studs \$12.50, 1 Diamond stud \$30.	42 50
2 Dunhill pipes .....	17 00
1 Amber gold mounted cigarette holder.....	5 50
5 Cartons Lucky Strike cigarettes.....	10 00

10 lbs. tobacco .....	11 50
1 Snakeskin belt with silver buckle and brilliant.....	15 00
Cash on board .....	210 00
Total.....	\$ 2,906 00

JNO. T. RANDELL.

Sworn to and subscribed before me this  
13th day of April, 1929.

MILTON R. DEREYNA.  
(Seal)

## APPENDIX I

**Affidavit of John Williams, April 9, 1929**

ESTABLISHING HIS CLAIM FOR COMPENSATION, BUT  
NOT INCLUDING GENERAL COMPENSATION

UNITED STATES OF AMERICA

State of Louisiana,	} S.S.
Parish of Orleans,	
City of New Orleans	

Before me, the undersigned authority, personally came and appeared John Williams, who being first duly sworn deposes and says:

That he was a member of the crew of the British Auxiliary Schooner *P'm Alone* prior to and on the 22nd day of March, 1929, the date the said vessel was sunk by the United States Coast Guard Cutter *Dexter*, and that the following is a list with their respective values of the personal effects belonging to said affiant, that was on board the said vessel at the said time of her sinking as aforesaid; to wit:—

1 Sextant .....	\$ 90 00
1 Set teeth .....	87 00
4 Pair pants .....	8 00
9 Shirts .....	27 00
3 Pair shoes .....	16 00
1 Pair rubber boots.....	7 50
1 Suit oil clothes.....	8 00



1 Oil hat .....	1 00
2 Caps .....	5 00
10 Pair socks .....	5 00
2 Suitcases .....	10 00
5 Suits underwear .....	15 00
3 Dozen collars .....	9 00
6 Ties .....	6 00
12 Navigation Books .....	45 00
1 Pair Parallel Rules.....	4 00
1 Pair Dividers .....	2 00
1 Raincoat (rubber) .....	7 00
1 Overcoat .....	25 00
1 Clock (small) .....	4 00
1 Razor and toilet articles.....	15 00
2 Knives .....	2 00
1 Fountain Pen .....	7 00
1 Serge Suit .....	55 00
1 Waltham Watch .....	40 00
<hr/>	
Total.....	\$ 500 50

(Seal)

JOHN WILLIAMS (Seal)

Sworn to and subscribed before me this  
9th day of April, 1929.

MILTON R. DEREYNA,  
*Notary Public.*

## APPENDIX J

Affidavit of Jens Jansen, April 9, 1929.

ESTABLISHING HIS CLAIM FOR COMPENSATION, BUT  
NOT INCLUDING GENERAL COMPENSATION

UNITED STATES OF AMERICA

State of Louisiana	}	S.S.
Parish of Orleans		
City of New Orleans		

Before me, the undersigned authority, personally came and appeared James Jensen, who being first duly sworn deposes and says:

That he was a member of the crew of the British Auxiliary Schooner *I'm Alone* prior to and on the 22nd day of March, 1929, the date the said vessel was sunk by the United States Coast Guard Cutter *Dexter*, and that the following is a list with their respective values of the personal effects belonging to said affiant, that was on board the said vessel at the said time of her sinking as aforesaid; to wit:—

1 Sea bag .....	\$ 50 00
1 Overcoat .....	40 00
1 Dress suit .....	35 00
3 Pair shoes .....	16 00
6 Dress shirts .....	15 00
Collars and ties .....	5 00
Handkerchiefs .....	3 00
1 Hat-cap .....	7 00
Socks .....	4 00
Shaving outfit .....	15 00
1 Gramophone .....	50 00
1 Binocular .....	25 00
2 Suitcases .....	18 00
1 Gold chain and watch.....	45 00
1 Kit of working tools .....	20 00
Total .....	<hr/> \$348 00

JENS JANSEN.

Sworn to and subscribed before me this  
9th day of April, 1929.

MILTON R. DE REYNA,  
*Notary Public.*

## APPENDIX K

Affidavit of James Barrett, April 9, 1929.

ESTABLISHING HIS CLAIM FOR COMPENSATION, BUT  
NOT INCLUDING GENERAL COMPENSATION

UNITED STATES OF AMERICA

State of Louisiana	}	S.S.
Parish of Orleans		
City of New Orleans		

Before me, the undersigned authority, personally came and appeared James Barrett, who being first duly sworn deposes and says:

That he was a member of the crew of the British Auxiliary Schooner *I'm Alone* prior to and on the 22nd day of March, 1929, the date the said vessel was sunk by the United States Coast Guard Cutter *Dexter*, and that the following is a list with their respective values of the personal effects belonging to said affiant, that was on board the said vessel at the said time of her sinking as aforesaid; to wit:—

Sailor's kit bag containing working clothes, oil skins, sea-boots, etc.....	\$ 50 00
Kit of working tools .....	10 00
Overcoat .....	40 00
5 Dress shirts .....	15 00
Hat .....	8 00
Suit .....	55 00
Shoes .....	8 00
Socks .....	5 00
Handkerchiefs .....	2 00
Underwear .....	8 00
Razor .....	6 00
Flashlight .....	4 00
Suitcase .....	10 00
Fountain-pen .....	5 50
Book .....	2 50
Ornamental corkscrew .....	3 00
Jack-knife .....	3 00
Gold chain and 17 jewel Hamilton watch.....	45 00
Mirror .....	1 00
Comb and brush.....	1 00
Total .....	\$282 00

JAMES BARRETT.

Sworn to and subscribed before me this  
9th day of April, 1929.

MILTON R. DE REYNA, *Notary Public*.

## APPENDIX L

**Affidavit of William Wordsworth, April 9, 1929**  
**ESTABLISHING HIS CLAIM FOR COMPENSATION, BUT**  
**NOT INCLUDING GENERAL COMPENSATION**

UNITED STATES OF AMERICA

State of Louisiana	}	S.S.
Parish of Orleans		
City of New Orleans		

Before me, the undersigned authority, personally came and appeared William Wordsworth, who being duly sworn deposes and says:

That he was a member of the crew of the British Auxiliary Schooner *I'm Alone* prior to and on the 22nd day of March, 1929, the date the said vessel was sunk by the United States Coast Guard Cutter *Dexter*, and that the following is a list with their respective values of the personal effects belonging to said affiant, that was on board the said vessel at the said time of her sinking as aforesaid; to wit:—

1 Blue suit .....	\$ 24 00
1 Cashmere suit .....	24 00
4 Working shirts .....	10 00
3 Dress shirts .....	12 00
4 Pair pants .....	15 00
1 Sweater .....	2 00
4 Suits underclothes .....	12 00
5 Pair socks .....	2 50
3 Pillow cases .....	1 50
1 Pair glasses .....	3 00
1 Belt .....	1 00
1 Felt Hat .....	5 00
1 Cap .....	1 00
1 Brush and comb .....	1 50
1 Razor .....	2 00
1 Strap .....	1 00
1 Suitcase .....	6 00
2 Pairs boots .....	12 00
1 Pair slippers .....	1 00
1 Blanket .....	1 50
1 Bedspread .....	2 50
3 Towels .....	1 50
1 Watch .....	10 00
1 Gold pin .....	5 00
Total .....	<u>\$157 00</u>

WILLIAM WORDSWORTH.

Sworn to and subscribed before me this

9th day of April, 1929.

MILTON R. DE REYNA, *Notary Public.*



## APPENDIX M

Affidavit of Eddie Young, April 9, 1929.

ESTABLISHING HIS CLAIM FOR COMPENSATION, BUT  
NOT INCLUDING GENERAL COMPENSATION

UNITED STATES OF AMERICA

State of Louisiana	}	S.S.
Parish of Orleans		
City of New Orleans		

Before me, the undersigned authority, personally came and appeared Eddie Young, who being first duly sworn deposes and says:

That he was a member of the crew of the British Auxiliary Schooner *I'm Alone* prior to and on the 22nd day of March, 1929, the date the said vessel was sunk by the United States Coast Guard Cutter *Dexter*, and that the following is a list with their respective values of the personal effects belonging to said affiant, that was on board the said vessel at the said time of her sinking as aforesaid; to wit:—

1 Blue serge suit.....	\$ 24 00
1 Tweed suit .....	24 00
1 Cashmere suit .....	22 00
4 Extra dress pants.....	16 00
1 Watch and chain.....	25 00
6 Suits underwear .....	8 00
7 Pair socks .....	3 50
1 Winter coat .....	25 00
1 Coat sweater .....	6 50
2 Felt hats and 1 cap.....	10 00
1 Blanket .....	3 50
2 Pair shoes .....	12 00
2 Suitcases .....	9 00
4 Silk shirts and 3 white shirts.....	25 00
4 Working shirts (blue).....	4 00
4 Working pants (blue).....	8 00
6 Neckties and 4 collars.....	5 00
1 Razor set—2 belts.....	2 50
3 Face towels .....	1 50
1 Set comb and brush.....	2 00
1 Tie pin .....	3 00
Total.....	\$ 249 50

EDDIE YOUNG

Sworn to and subscribed before me this  
9th day of April, 1929.

MILTON R. DE REYNA,  
Notary Public.

## APPENDIX N

Affidavit of Chesley Hobbs, April 9, 1929.

ESTABLISHING HIS CLAIM FOR COMPENSATION BUT  
NOT INCLUDING GENERAL COMPENSATION

UNITED STATES OF AMERICA

State of Louisiana	}	S.S.
Parish of Orleans		
City of New Orleans		

Before me, the undersigned authority, personally came and appeared Chesley Hobbs, who being first duly sworn, deposes and says:—

That he was a member of the crew of the British Auxiliary Schooner *I'm Alone* prior to and on the 22nd day of March, 1929, the date the said vessel was sunk by the United States Coast Guard Cutter *Dexter*, and that the following is a list with their respective values of the personal effects belonging to said affiant, that was on board the said vessel at the said time of her sinking as aforesaid, to wit:—

1 Kit bag .....	\$ 50 00
1 Leather suitcase .....	25 00
1 Dress suit .....	45 00
1 Top coat .....	30 00
1 Pair dress shoes.....	8 00
2 Pair working shoes.....	9 00
6 Dress shirts .....	15 00
1 Dozen collars .....	3 50
1 Dozen handkerchiefs .....	1 50
2 Caps .....	5 00
1 Leather jacket .....	12 00
1 Shaving set .....	10 00
1 Watch .....	40 00
1 Set of engineering books.....	20 00
1 Chest of engineering tools.....	300 00
Total.....	\$ 573 50

CHESLEY HOBBS.

Sworn to and subscribed before me this  
9th day of April, 1929.

MILTON R. DE REYNA,  
*Notary Public.*

## APPENDIX O

Affidavit of Edward Fouchard, April 9, 1929.

ESTABLISHING HIS CLAIM FOR COMPENSATION BUT  
NOT INCLUDING GENERAL COMPENSATION

UNITED STATES OF AMERICA

State of Louisiana	}	S.S.
Parish of Orleans		
City of New Orleans		

Before me, the undersigned authority, personally came and appeared Edward Fouchard, who being first duly sworn deposes and says:—

That he was a member of the crew of the British Auxiliary Schooner *I'm Alone* prior to and on the 22nd day of March, 1929, the date the said vessel was sunk by the United States Coast Guard Cutter *Dexter*, and that the following is a list with their respective values of the personal effects belonging to said affiant, that was on board the said vessel at the said time of her sinking as aforesaid, to wit:—

Sailor's kit bag containing working clothes, oilskins, sea-boots, etc. ....	\$ 50 00
Suit .....	40 00
Shoes .....	8 00
Overcoat .....	40 00
Hat .....	6 00
Handkerchiefs .....	1 50
Underwear .....	8 00
Razor .....	5 00
Flashlight .....	2 00
Suitcase .....	8 00
Toilet Set .....	4 50
Socks .....	5 00
Mackinaw jacket .....	10 00
Five dress shirts .....	15 00
Kit of tools .....	10 00
Jack-knife .....	2 00

Total .....	\$215 00
-------------	----------

EDWARD FOUCHARD.

Sworn to and subscribed before me this  
9th day of April, 1929.

MILTON R. DE REYNA,  
*Notary Public.*

## APPENDIX P

## (1) Statutory Declaration of Amanda Mainguy, August 21, 1929.

St. Pierre }  
Miquelon }

IN THE MATTER of the sinking of the British steamship *I'm Alone* official number 150960 of the port of Lunenburg, Nova Scotia, by revenue cutters of the United States of America.

I, Amanda Mainguy of St. Pierre, Miquelon, widow of the late Léon Mainguy, do solemnly declare and state as follows:—

1. I am the widow of the late Léon Mainguy, formerly of St. Pierre, Miquelon.

2. My husband, the said Léon Mainguy, was, at the time of his death, hereinafter referred to, a member of the crew of the above named ship *I'm Alone*, and was drowned at the time of the sinking of the said ship on or about the 22nd day of March, A.D. 1929.

3. I am advised and verily believe that my said husband was drowned in an endeavour to make his escape from the said ship *I'm Alone* as she was sinking from gun fire of the United States Coastguard Cutters *Dexter* and *Wolcott*.

4. I am of the age of 46 years and have no independent income nor am I fitted by training or experience to engage in any remunerative work.

5. My late husband and myself had three children, all of whom are still living and were dependent on their father for their support, and their names and ages, at the date of the death of the said Léon Mainguy, are as follows:—

Henriette Mainguy . . . . .	18 years
Jeanne Mainguy . . . . .	17 “
John Mainguy . . . . .	14 “

6. My late husband at the time of his death was of the age of 48 years and had always enjoyed good health and was at all times thrifty and industrious and a good provider for myself and children.

7. Attached hereto and marked Exhibit “A,” by the official before whom this Declaration is signed, is, I am informed and verily believe, a true copy of the Report of the Surgeon who performed an autopsy on my husband's remains.



8. I am familiar with the amount of money earned by my late husband during his lifetime and I say that his average monthly earnings for the three years immediately preceding his death would be approximately \$115 per month.

9. My husband and I were both at the time of his death French subjects and I am now a French subject.

10. My husband had on board the said ship, at the time of the sinking thereof, the following personal belongings, all of which were lost at the time of his death, a fair valuation of which would be the sum of \$185.

1 new suit	2 windbreakers
2 caps	15 pairs socks
1 hat	1 doz. handkerchiefs
5 pants	2 pairs shoes
8 undershirts and drawers	2 pairs boots
6 khaki shirts	2 suits oiled clothes
4 dress shirts	2 oiled hats
1 mackinaw shirt	5 overalls
1 mackinaw	1 suitcase
1 raincoat	1 razor and outfit
2 sweaters	1 watch.

And I make this solemn declaration conscientiously believing the same to be true and knowing it to be of the same force and effect as if made under oath.

Declared before me at St. Pierre,  
Miquelon, this 21st day of  
August, A.D. 1929,

H. SAUTOT

*Monsieur le Gouverneur des  
Iles Saint Pierre et Miquelon,  
Saint-Pierre-Miquelon.*

A. MAINGUY,  
Vu pour légalisation de la  
signature  
MADAME A. MAINGUY  
Saint-Pierre, le 21 août 1929  
Pour le Gouverneur et par  
Délégation:  
Le Chef de Cabinet,  
CHARLES M. CORMIER.

EXHIBIT "A"  
U.S. Marine Hospital,  
New Orleans, La.

March 25, 1929.

NECROPSY PROTOCOL

Name: Léon Mainguy (Identity given by Commanding Officer, U.S. Coast Guard Cutter, *Wolcott*).

Necropsy performed by: Surgeon W. C. Rucker, Assistant Surgeon (R) J. T. Jackson, Assistant Surgeon (R) W. P. Griffey, Assistant Surgeon (R) R. L. Evans.

Witnessed by: Passed Assistant Surgeon L. W. Tucker and Dr. George A. Cronan, representing the District Attorney's Office, Assistant Surgeon (R) O. F. Hedley, Recorder.

Location and time: U.S. Marine Hospital, New Orleans, March 24, 1929, at 5.15 p.m.

External examination: A cursory external examination was made on board U.S. Coast Guard Cutter *Wolcott* at 3.30 p.m., March 24, 1929, by Dr. George A. Cronan, Assistant Surgeon (R) J. T. Jackson, Assistant Surgeon (R) R. W. Wolfe, and Assistant Surgeon (R) O. F. Hedley, at which time the following were noted:

1. No lacerations, external signs of fractures, nor gunshot wounds.

2. Abrasions over bridge of nose, over right temporal region, above right inner canthus and over right brow.

3. No hemorrhage from the orifices.

4. An old contusion over left shoulder.

5. That on placing the body in a prone position about 50 cc. of transparent blood tinged fluid escaped from the oral cavity and that the regions about the lips were coated with a yellow frothy material.

The body was lying on deck wrapped in a tarpaulin and a necrotic odor was noticed. According to the Commanding Officer of the U.S. Coast Guard Cutter *Wolcott*, the body had been on deck exposed to the elements since the morning of Friday, March 22, 1929.

Examination at necropsy reveals that of a well developed, obese, clean-shaven, white male, apparently 40 years of age, weighing about 180 pounds and 67 $\frac{1}{4}$  inches tall (by measurement). Rigor mortis is present but not marked. Livor mortis

is present. There is considerable body odor present. Distinguishing marks consist of gold crown bridges from lateral incisors right and left and two vaccination marks about size of a dime on right deltoid region. A plain gold wedding ring is found on left ring finger.

*Head:* Symmetric and without external signs of fracture.

*Hair:* Reddish brown colour, well distributed and blood-soaked in right occipital region.

*Eyes:* Brown colour, conjunctive considerably injected, pupils not dilated but equal and round.

*Face:* Full, clean-shaven but with several days' growth of a reddish coloured beard.

*Skin:* There is a fresh abrasion about the size of a twenty-five cent piece over bridge of nose and left ala, another about the same size over the right zygomatic arch, and above right inner canthus and right brow. There is an ecchymotic spot of recent origin over right tempero-maxillary region from front of right ear to the mid-brow. There is coagulated blood around left eye. No perforating wounds of the head. The nasal, oral and auditory orifices show no evidence of hemorrhage. There is considerable yellowish frothy material around the oral orifice and considerable blood-tinged fluid escaped from the mouth on turning body to a prone position. Examination of the mouth revealed it to be apparently normal. There is no evidence of fracture of the nose or mandible.

*Neck:* Apparently normal.

*Torso:* Old contusion over left shoulder. There are no scars of surgical operations on abdomen. No evidence of fractured ribs.

*Genitals:* Pubic hair is of a reddish colour and normally distributed. The penis is apparently normal. No fecal matter exudes from the anus.

*Extremities:* Upper extremities reveal fresh abrasion at junction mid and distal phalanges, dorsal surface, right little finger and a similar one on right middle finger, dorsal surface on the distal portion of proximal phalanx. There are old abrasions on back of left hand and back of left index finger and small old abrasion over left epitrochlear region. The lower extremities were apparently normal.

## INTERNAL EXAMINATION

*Head:* The calvarium was removed. Just anterior to the right parietal eminence, immediately beneath the scalp, there is extravasated and coagulated blood. There was no apparent injury to the meninges. No fracture of the skull, either at the base or calvarium. All dural blood vessels and blood vessels of brain were deeply engorged. The brain was removed and no signs of intercranial hemorrhage noted. Cut sections of the brain were apparently normal.

*Torso:* Incision made from suprasternal notch to symphysis pubis and plastron removed. Subcutaneous fat well marked.

*Examination of viscera in situ:* Considerable bloody fluid was noted in both pleural cavities. No adhesions nor evidence of tubercle formation noted in chest. The lungs showed normal distension. The heart is normal in size and position. No fluid in pericardium and no pericardial adhesions. The diaphragm is in normal position. The liver not apparently enlarged. The gall bladder is distended but no stones are present. The stomach is apparently normal. The intestines show slight distension from formation of gas. The organs were removed in toto, the large vessels ligated and the viscera were then dissected out and examined.

*Right lung:* Weight, 630 gm. Marked anthracosis present. Floats on water. No adhesions to parietal pleura, pericardium, nor between lobes. Cut surface exudes bloody fluid freely. Thin watery exudate is expressed from bronchi, chiefly at bases.

*Left lung:* Weight, 610 gm. Marked anthracosis present. Floats on water. No adhesions present. Cut surface exudes bloody fluid freely. Thin watery exudate is expressed from bronchi, chiefly at bases. Pericardium, normal thickness, no free fluid, no adhesions.

*Heart:* Weight 430 gm. Valves normal, myocardium apparently normal. Cardiac fat apparently normal.

*Liver:* Weight 1,630 gm. size normal. Surface smooth and glistening. Cut sections apparently normal.

*Gall-bladder:* Distended and elongated. No stones. Wall apparently normal.

*Pancreas:* Apparently normal.



*Right kidney:* Weight 175 gm. Capsule strips with ease but is bound in one or two places by bands of adhesions. Surface shows regions of depression, apparently due to old scars. Cut surface shows structures to be apparently normal.

*Left kidney:* Weight 220 gm. Surface at upper pole is somewhat scarred and contracted. On cut surface of upper half, many hard fibrous nodules are noticed. Cut section otherwise normal.

*Bladder:* Apparently normal. Not greatly distended.

*Spleen:* Weight, 80 gm., is soft and pliable.

*Stomach:* Contains about 100 cc watery material in which there are many food particles. External and internal surfaces of stomach apparently normal.

*Intestines:* Slight distension noticed. Otherwise apparently normal.

#### SUMMARY OF PATHOLOGICAL FINDINGS

1. Fresh abrasions of varying sizes over bridge of nose, left ala of nose, right zygomatic arch, right brow, right inner canthus, dorsal surface right little finger at junction of mid and distal phanges, right middle finger dorsal aspect of proximal phalanx on dorsal surface, all of which apparently occurred ante-mortem.

2. Old abrasions on dorsal aspect left hand and left index finger.

3. Old contusion posterior aspect left shoulder.

4. Ecchymotic spot over right temporo-maxillary from front of right ear to the mid-brow.

5. Yellow frothy material around oral orifice.

6. Transparent blood-tinged fluid escapient from oral orifice when in prone position and apparently from respiratory tract and similar to that found in bronchi on cut section.

7. Subcutaneous extravasation of coagulated blood (deep contusion) anterior to the right parietal eminence.

8. Congestion of dural vessels and blood vessels of brain.

9. Bloody fluid in both pleural cavities.

10. Bloody fluid noted in lung parenchyma on cross-section. Watery fluid in bronchi of both lungs.

11. Adhesions of cortex of right kidney to the capsule.

12. Cicatricial tissue upper pole of left kidney. Portion to be studied microscopically: Right lung.

Cause of death—Drowning.

W. C. RUCKER,

*Surgeon, U.S. P. H. S.*

Certifié conforme à l'exemplaire qui m'a été envoyé par le Consul Général de France à la Nouvelle-Orléans.

SAINT-PIERRE, le 21 août 1929.

Le Gouverneur p.i. des Iles St-Pierre  
et Miquelon.

H. SAUTOT.

**(2) Translation of Statutory Declaration of Amanda Mainguy,  
August 21, 1929.**

St. Pierre }  
Miquelon }

IN THE MATTER of the sinking of the British steamship

*I'm Alone*

STATUTORY DECLARATION OF AMANDA MAINGUY

Traduction

St. Pierre }  
Miquelon }

Affaire du navire Anglais *I'm Alone* numéro officiel 150960 du port de Lunenburg coulé par les garde-côtes des Etats-Unis.

Je soussignée Amanda Mainguy de St. Pierre et Miquelon fais solennellement les déclarations suivantes:

1. Je suis la veuve de Léon Mainguy de St. Pierre et Miquelon.

2. Mon mari, Léon Mainguy, au moment de sa mort mentionnée plus loin, faisait partie de l'équipage du navire *I'm Alone* et s'est noyé au moment où ce navire a été coulé le ou vers le 22 mars 1929.

3. J'ai été avisée, et je le crois, que mon mari s'est noyé en faisant une tentative pour se sauver du dit navire *I'm Alone* au moment où il coulait sous le feu des canons des Garde-Côtes Américains *Dexter* et *Wolcott*.

4. Je suis âgée de 46 ans et n'ai aucun revenu, aucun entraînement, aucune expérience me permettant de pouvoir m'engager dans un emploi rémunérateur.

5. Mon mari et moi-même avions trois enfants, tous vivants actuellement et qui comptaient sur leur père pour subvenir à leur existence, leurs noms et âges sont:

Henriette Mainguy . . . . .	18 ans
Jeanne Mainguy . . . . .	17 "
Jean Mainguy . . . . .	14 "

6. Mon mari au moment de sa mort était âgé de 48 ans ayant toujours joui d'une bonne santé, étant très actif et industriel, et nous ayant toujours assuré l'aisance à moi comme à mes enfants.

7. Ci-joint une copie du rapport médical dénommé "Exhibit A" que je crois fermement être exact, ce rapport ayant été rédigé par le chirurgien ayant fait l'autopsie du corps de mon mari.

8. J'étais au courant de ce que gagnait mon mari durant toute sa vie et je déclare que, durant les trois ans qui ont précédé sa mort, il se faisait des appointements d'une moyenne de \$115 par mois.

9. Mon mari et moi étions tous deux de nationalité Française et je suis actuellement Française.

10. Mon mari possédait à bord du navire coulé les affaires personnelles qui suivent, lesquelles ont été perdues et qui doivent être évaluées à la somme de \$185.

1 complet neuf	1 mackinaw shirt (blouse
2 casquettes	chemise)
1 chapeau	1 pardessus mackinaw
5 pantalons	1 manteau caoutchouc
8 tricot de dessous et	2 chandails
caleçons	2 windbreakers (paletots
6 chemises khaki	de laine)
4 chemises blanches	15 paires de chaussettes

1 douzaine de mouchoirs	5 overalls (vêtements de
2 paires de souliers	travail)
2 paires de bottes	1 valise
2 complets cirés	1 rasoir avec accessoires
2 suroîts	1 montre.

Et je fais cette déclaration solennelle consciencieusement croyant fermement qu'elle est exacte et sachant qu'elle a la même force et la même valeur que sous la foi du serment.

Déclaré en ma présence à St. }  
 Pierre et Miquelon ce 21 }  
 août 1929. }  
 (Signé) H. SAUTOT }

A. MAINGUY

Vu pour légalisation de la  
 signature de Madame A.  
 Mainguy.

Monsieur le Gouverneur des Iles St. Pierre et Miquelon.  
 St. Pierre et Miquelon.

Saint-Pierre, le 21 août 1929.

Pour le Gouverneur et par

Délégation:

Le Chef de Cabinet,

CHARLES M. CORMIER.

Traduction certifiée conforme,  
 l'interprète juré de la langue anglaise:

P. HUMBERT.

### (3) Affidavit of Andrew Daniel Watson, August 8, 1933.

IN THE MATTER of the *I'm Alone*

AND

IN THE MATTER of a claim submitted by His Majesty's Government in Canada on behalf of the British registered schooner *I'm Alone*, for compensation under Article 4 of the 1924 Convention, against the Government of the United States of America.

I, Andrew Daniel Watson, of the Village of Rockcliffe, in the County of Carleton and Province of Ontario, do solemnly declare and state as follows:—



(1) I am the Chief Actuary, Department of Insurance, Ottawa, Canada, and I am a Fellow of the Actuarial Society of America and a Fellow of the Institute of Actuaries of Great Britain, and I have had experience extending over many years in calculation of values of annuities.

(2) The bases on which the calculations herein submitted are made are the same as the bases on which annuities are sold to the public by the Government of Canada, and they are (a) Tables of mortality (select), known as the British Officers' Life Annuity tables, 1893, published in 1903 by the Institute of Actuaries of Great Britain, and the Faculty of Actuaries in Scotland and (b) Interest at four percentum per annum.

(3) On the said bases, the value of an income of \$115 monthly, during the joint lifetime of a husband, aged forty-eight years, and of his wife, aged forty-six years, is \$16,268.

(4) And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath by virtue of The Canada Evidence Act.

Declared before me at Ot-  
tawa, in the Province of  
Ontario, this 8th day of  
August, A.D. 1933.  
F. P. VARCOE  
(Notarial Seal)

A. D. WATSON.





# CLAIM OF THE BRITISH SHIP "I'M ALONE"

---

STATEMENT WITH REGARD TO THE QUESTION OF  
ULTIMATE BENEFICIAL OWNERSHIP SUBMITTED  
BY THE CANADIAN AGENT PURSUANT  
TO DIRECTIONS GIVEN BY THE  
COMMISSIONERS, DATED  
30TH JUNE, 1933

Submitted on behalf of His Majesty's Government in Canada for  
the Joint Consideration of

The Honourable Willis Van Devanter  
and  
The Right Honourable Sir Lyman Poore Duff, G.C.M.G.

---

J. E. READ, Canadian Agent

---



OTTAWA  
J. O. PATENAUDE  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
1934





## CONTENTS

	PAGE
Statement Submitted by the Canadian Agent with Regard to the Question of Ultimate Beneficial Ownership.....	5

## APPENDICES

APPENDIX (A-1). Birth Certificate of George J. Hearn.....	12
APPENDIX (A-2). Bill of Sale from Christian Iversen to Eugene Creaser Shipping Company, Limited.....	13
APPENDIX (A-3). Certificate of Incorporation of Eugene Creaser Shipping Company Limited.....	15
APPENDIX (A-4). Bill of Sale from Eugene Creaser Shipping Company, Limited, to Eastern Seaboard Steamship Agencies.....	16
APPENDIX (A-5). Bill of Sale from Eastern Seaboard Steam- ship Agencies to Eugene Creaser Shipping Company, Limited.....	18
APPENDIX (A-6). Certified Copy of Invoice of Cargo.....	20
APPENDIX (A-7). Certificate of Registration of <i>I'm Alone</i> ....	22
APPENDIX (B-1). Affidavit of George J. Hearn, May 23, 1934	23
APPENDIX (B-2). Affidavit of George J. Hearn, September 20, 1929.....	25
APPENDIX (B-3). Affidavit of W. W. Veitch, July 7, 1933....	26



**STATEMENT SUBMITTED BY THE CANADIAN AGENT WITH  
REGARD TO THE QUESTION OF ULTIMATE  
BENEFICIAL OWNERSHIP**

1. In the Joint Interim Report of the Commissioners, dated the 30th June, 1933, which is set forth on pages 5 to 8, inclusive, of the Statement with regard to the Claims for Compensation, submitted by the Canadian Agent, the Commissioners, after referring to the preliminary questions, stated:

“The question, numbered one, is in the following terms:—

The first question is whether the Commissioners may inquire into the beneficial or ultimate ownership of the *I'm Alone* or of the shares of the corporation that owned the ship. If the Commissioners are authorized to make this inquiry, a further question arises as to the effect of indirect ownership and control by citizens of the United States upon the Claim; viz., whether it would be an answer to the Claim under the Convention, or whether it would go to mitigation of damages, or whether it would merely be a circumstance that should actuate the claimant Government in refraining from pressing the claim, in whole or in part.

The answer given to this question is as follows:—

The Commissioners think they may inquire into the beneficial or ultimate ownership of the *I'm Alone* and of the shares of the corporation owning the ship; as well as into the management and control of the ship and the venture in which it was engaged; and that this may be done as a basis for considering the recommendations which they shall make. But the Commissioners reserve for further consideration the extent to which, if at all, the facts of such ownership, management and control may affect particular branches or phases of the claim presented.”

2. After considering and answering the preliminary questions, the Commissioners made the following recommendations:—

“First: that the agents be instructed by their respective Governments to prepare and submit to the Commissioners



separate statements setting forth in detail the contentions of their respective Governments as to the ultimate beneficial interests in the vessel and in the cargo, together with specifications of the documents and witnesses relied upon to substantiate their respective contentions:"

3. Pursuant to this recommendation, it becomes necessary to submit for the consideration of the Commissioners, the contentions of the Government of Canada as to the ultimate beneficial interest in the *I'm Alone* and in the cargo, together with specifications of the documents and witnesses relied upon to substantiate such contentions.

4. In order to facilitate the expeditious disposition of the case, the contentions are being presented in the present statement, and the evidence is in the Appendices hereto annexed, in the form of affidavits, declarations and other documents. It is understood that the Agent of the United States may request the attendance at the hearing of affiants or declarants, and formal proof of documents, and that such request will be complied with in so far as it may be practicable to do so. It is also assumed that the statement by the Agents of the United States will be subject to a corresponding understanding.

5. The present statement is made without prejudice to the position taken on behalf of the Canadian Government in the brief (Canadian brief pp. 9-12). It is not intended to concede that the inquiry into beneficial or ultimate ownership is justified by the provisions of the Convention, but the statement is being made in order to comply with the recommendations of the Commissioners, reserving generally the position of the Canadian Government.

6. The Canadian Government does not question the charge made here and there throughout the present proceedings that the *I'm Alone* was engaged at the time of the incident in the marketing of intoxicating liquors on the high seas, adjacent to the coast of the United States, or that the vessel had been so engaged under various owners for some years prior to the incident in question. This activity has been variously described in different documents on record and it is not proposed to discuss either the morality or the legality of such an enterprise. It is a basic principle of justice, recognized under the laws of both countries, as well as by International Law, that good men and

bad men, good ships and bad ships, alike are entitled to the protection of the law and to redress when they are unlawfully injured. When it is borne in mind that the remedial provisions upon which the present proceedings are based (Article IV of the Convention, Canadian Brief, p. 7) are obviously designed to afford redress to British vessels when injured as a result of the unreasonable exercise of the rights conferred by Article II of the Convention (Canadian Brief, p. 6), it becomes clear that the right of redress extends to vessels the seizure of which might be justified and cannot possibly depend upon the innocence of the vessel.

7. The *I'm Alone* was, throughout the venture, owned, controlled and operated by a Canadian corporation. The shares of that corporation were all owned by British subjects and not upon trust for United States citizens.

8. George J. Hearn of the City of Montreal, a natural born British subject was engaged in the shipping business in that City in the year 1928.

The birth certificate of George J. Hearn is set forth in Appendix A-1, *infra*. p. 12.

In the summer of 1928, Mr. Hearn negotiated the purchase of the *I'm Alone* from Christian Iversen of Lunenburg, N.S. He paid the purchase price out of his own monies and took a Bill of Sale of the ship. The title to the ship was then vested in the Eugene Creaser Shipping Company Limited, of Lunenburg, N.S. under a Bill of Sale from Christian Iversen, dated the 26th June, 1928. At that time, the company was controlled by Iversen and, upon the purchase by Mr. Hearn, the title was transferred by Bill of Sale, dated the 29th September, 1928, from the Eugene Creaser Shipping Co. Limited, to the Eastern Seaboard Steamship Agencies, Limited, a body corporate, controlled by Mr. Hearn and under which he operated his shipping business. It was Mr. Hearn's intention to form a corporation in which to vest the ownership of the *I'm Alone*, and in order to expedite matters and to save time, he contracted for the transfer from Iversen to himself or his nominees of all of the shares of that company. The transfer was effected and, concurrently, the title of the ship was transferred back to the Eugene Creaser Shipping Company, Limited, by Bill of Sale from the Eastern Seaboard Steamship Agencies Limited, on the 29th November, 1928.

The *I'm Alone* was thenceforth owned and operated by the Eugene Creaser Shipping Company Limited, a body corporate, incorporated under the laws of the Province of Nova Scotia, the entire share-capital of which was vested in Mr. Hearn or his nominees:—

1. The Bill of Sale from Christian Iversen to the Eugene Creaser Shipping Co. Limited, dated the 26th June, 1928, is set forth in Appendix A (2), *infra* p. 13.
2. The Certificate of Incorporation of the Eugene Creaser Shipping Company Limited, dated the 30th August, 1929, is set forth in Appendix A (3) *infra* p. 15.
3. The Bill of Sale from the Eugene Creaser Shipping Company, Limited, to the Eastern Seaboard Steamship Agencies, Limited, dated the 29th September, 1928, is set forth in Appendix A (4) *infra* p. 16.
4. The Bill of Sale from the Eastern Seaboard Steamship Agencies, Limited, to the Eugene Creaser Shipping Company, Limited, dated the 29th November, 1928, is set forth in Appendix A (5) *infra* p. 18.
5. The Affidavit of George J. Hearn relating to these matters, and dated the 23rd May, 1934, is set forth in Appendix B (1) *infra* p. 23.
6. The Affidavit of W. W. Veitch, relating in part to these matters and dated the 7th July, 1933, is set forth in Appendix B (3) *infra* p. 26.

9. The Eugene Creaser Shipping Company, Limited, was substantially a corporation owned and controlled by Mr. Hearn. Apart from the qualifying shares, the share capital was entirely owned by him. There were in all 64 shares of the corporation, 60 of which were owned by Mr. Hearn, and one share each was owned by the following persons:

William Wellington Veitch,  
Leon J. Iversen,  
Christian Iversen,  
Harris Himmelman.

All of these shareholders were British subjects and born in Canada.

1. The Affidavit of George J. Hearn, relating to these matters and dated the 20th day of September, 1929, is set forth in Appendix B, (2) *infra* p. 25.

10. The cargo of the *I'm Alone* on the date of the sinking consisted mainly of intoxicating liquors purchased by the Eugene Creaser Shipping Company, Limited, out of monies drawn either from the capital of the company or from the proceeds of sales to its customers. The goods were billed to the *I'm Alone* by name, and shipped at Belize, British Honduras. The details with regard to the cargo and shipments will be found in Captain Randell's affidavits, Appendix F (1) and (2), the Statement with regard to the Claims for Compensation, on pages 27, 28 and 29. The purchase and billing of the most substantial part of the cargo is corroborated by a certified copy of the invoice of the Consolidated Distilleries Limited, of Montreal.

1. A certified true copy of the Invoice is set forth in Appendix A (6), *infra* p. 20.
2. The Affidavit of George J. Hearn, relating in part to these matters and dated the 23rd May, 1934, is set forth in Appendix B (1), *infra* p. 23.
3. The Affidavit of W. W. Veitch, relating in part to these matters and dated the 7th July, 1933, is set forth in Appendix B (3), *infra* p. 26.

11. The *I'm Alone* was registered at Lunenburg, in the Province of Nova Scotia, in accordance with the provisions of the Merchant Shipping Acts. At the date of the sinking, the vessel was registered in the name of the Eugene Creaser Shipping Company, Limited.

1. A certificate of the Registrar of Shipping, to the effect that the *I'm Alone* was duly registered as a British ship, is set forth in Appendix A (7), *infra* p. 22.

12. It is thus clear that throughout the entire adventure, and particularly on the 20th, 21st and 22nd days of March, 1929, the *I'm Alone* was a British ship, registered in Canada, and owned by a Canadian corporation, all the shareholders of which were British subjects. The Canadian Government is not aware of any circumstances that would indicate that either the company or its shareholders were agents or trustees of any alien persons or corporations. There can be no question as to the legal title of the ship and, in the absence at the present time of any particular statement or evidence to the effect that the ship or the shares of the Corporation were held in trust for United States interests, it would be obviously impracticable and



inappropriate to submit evidence or statements rebutting the existence of such a trust and thus corroborating the preceding statements and the implications to be drawn from the fact of legal ownership.

13. In the event that evidence is brought to the attention of the Commissioners, by the Agent of the United States, which would indicate a trust on behalf of United States interests, the Canadian Government reserves the right to submit evidence in reply. It is necessary, however, to point out again that, under the laws in force in Canada, no United States interests could obtain a proprietary interest in the *I'm Alone*. Incontrovertible evidence as to the existence of a trust would merely establish, conclusively, that the ship was subject to forfeiture and that, consequently, beneficial interest in the ship was in the Crown, in right of the Dominion of Canada—and not in Mr. Hearn and his associates on the one hand; or the supposed United States beneficiaries on the other. The position would then be that a ship, in which the legal title was vested in a Canadian corporation but in which the only realizable interest was in the Crown in right of the Dominion of Canada, had been unlawfully sunk by the *Dexter*.

14. It is also submitted that the Commissioners should not give consideration to any but the most competent and convincing evidence as to the existence of the alleged trust. The question of the existence of this trust was one which had to be considered by the Canadian Government, both from the point of view of determining whether the ship should be forfeited and also from the point of view of determining whether it was desirable to press a claim for compensation.

In the United States Brief, in considering the function of the Commissioners, it is urged that their function contemplated an attempt by two well-disposed advisers to prevent, if possible, an otherwise inevitable, international litigation. It is suggested that they were vested with authority to unite in advising either Government that the pending claim was not one that a friendly neighbour would be justified in pressing. It is conceived that the Commissioners might say to the complainant Government: "We assume that if the facts, as we have ascertained them, had been known to you at the outset, this claim never would have been made and, therefore, we do not hesitate

to recommend that you press it no farther." Assuming, for the purpose of argument, that such is the function of the Commissioners; it is submitted, with the utmost deference, that they would not be justified in approaching the claimant Government and saying: "You have made a mistake in the exercise of your duties with regard to the forfeiture of the *I'm Alone*. We think that the vessel was beneficially owned and controlled by United States interests and was thus potentially the property of the Crown on the date of the sinking. We do not think that you should insist upon your legal right to compensation, because we are afraid that, having obtained the money, you will not cause it to be forfeited to the Crown, but will pay it over to the Eugene Creaser Shipping Company, and thus enable it ultimately to be returned to United States interests." It is submitted, with the utmost deference, that such a course should not be considered and, in any event, that it should only be adopted if the evidence as to the existence of the alleged trust is competent and convincing. It is the view of the Canadian Government that, even in such an event, the Commissioners should be satisfied with bringing the matter to the attention of the Canadian Government, in order that consideration may be given to the advisability of undertaking forfeiture proceedings; and that it could not possibly be regarded as a ground for failing to recommend compensation in the present case.

J. E. READ,  
*Canadian Agent.*

## APPENDIX A-1

## Birth Certificate of George J. Hearn

(Crest)

Ontario

No. X 41510

## DEPARTMENT OF HEALTH

Registrar-General

Spadina House, Toronto

THIS IS TO CERTIFY that the information herein contained is from a Registration of a Birth on file in the office of the Registrar General of Ontario, Dominion of Canada, and is certified to be correct.

(This Certificate is granted under "The Vital Statistics Act," 1919, Sec. 7).

---

Name of Child—Hearn, George Joseph.

---

---

Date of Birth— July 8, 1885, Sex M.

---

---

Place of Birth— Barrie.

---

---

County— Simcoe.

---

JOHN W. S. McCULLOUGH,

(Seal)

Deputy Registrar-General,

Per W.T.K.

Date of Issue April 22, 1926.

Year 1885, Book K, Page 311.

## APPENDIX A-2

**Bill of Sale from Christian Iversen to Eugene Creaser  
Shipping Company, Limited**

Form No. 10

**BILL OF SALE (INDIVIDUALS OR JOINT OWNERS)**

Official Number	Name of Ship	No., Date and Port of Registry	
150960	<i>I'm Alone</i>	21 in 1923 Lunenburg, N.S.	
Whether a Sailing or Steam Ship		Horse Power of Engines, if any	
Aux Steam Crude Oil		N.H.P. 14- <sup>7</sup> / <sub>8</sub> B.H.P. 200	
		Feet	Tenths
Length from forepart of stem, under the bowsprit, to the aft side of the head of the stern post.....		125	6
Main breadth to outside of plank.....		27	0
Depth from top of deck at side amidships to bottom of keel.....		10	6
NUMBER OF TONS			
Gross.....	181.70	Registered.....	90.45

And as described in more detail in the certificate of the Surveyor and the Register Book.

NOTE—A Purchaser of a Registered British Vessel does not obtain a complete title until the Bill of Sale has been recorded at the Port of Registry of the Ship; and neglect of this precaution may entail serious consequences.

\* I, *Christian Iversen, of Lunenburg, N.S., Mariner*, in consideration of the sum of *One Dollar* paid to *† me* by *Eugene Creaser Shipping Co. Limited of Lunenburg, N.S.*, the Receipt whereof is hereby acknowledged, transfer *Sixty-four* Shares in the Ship above particularly described, and in her boats, guns, ammunition, small arms and appurtenances to the said *Eugene Shipping Co. Ltd.*

Further, *† I* the said *Christian Iversen* for *§ myself and my heirs*, covenant with the said *Eugene Shipping Co. Ltd.*, and *¶ their assigns*, that *\*\* I* have power to transfer the same are free from encumbrances *††*.

In witness whereof *I* have hereunto subscribed *my name* and affixed *my seal* this *26th* day of *June* one thousand nine hundred and *twenty-eight*.

Executed by the above-named *Christian Iversen* in the presence of *††*

S. E. MACK,  
Registrar of Shipping,  
Lunenburg, N.S.

CHRISTIAN IVERSEN  
Seal

NOTE—Registered owners or mortgagees are reminded of the importance of keeping the Registrar of Shipping informed of any change of residence on their part.

\*\*\*I" or "we."    †"Me" or "us."    ††I" or "we."    §"Myself or my" or "ourselves and our."    ¶ "His," "her" or "their."    \*\*\*I" or "we."    ††If there is any subsisting Mortgage, or outstanding Certificate of Mortgage, add "save as appears by the Registry of the said ship."    ††Name, address and description of witness.

Prescribed by  
H. M. CUSTOMS  
AND EXCISE



With the consent  
of the  
Board of Trade



(Endorsement)

BILL OF SALE

" I'M ALONE "

Christian Iversen

to

Eugene Creaser Shipping Co. Ltd.

Customs Lunenburg, N.S., date June  
26, 1928

Entered and duly registered this day  
at 3 o'clock, p.m.

Sgd. S. E. MACK,

*Registrar.*

(Stamp of Registrar of Shipping,  
Lunenburg, N.S., June 26, 1928)

## APPENDIX A-3

**Certificate of Incorporation of Eugene Creaser Shipping  
Company, Limited**

(Crest)

PROVINCE OF NOVA SCOTIA

I HEREBY CERTIFY that EUGENE CREASER SHIPPING COMPANY, LIMITED, was on the ninth day of February, A.D. 1925, incorporated under Chapter 192 of the Revised Statutes of Nova Scotia, 1923, "An Act to facilitate the Incorporation of Vessels in the Fishing Industry," and that its certificate of incorporation under said Chapter is now and has been continuously since said date in full force and effect.....

GIVEN under my hand and seal of office at the City of Halifax, in the Province of Nova Scotia, this thirtieth day of August One thousand nine hundred and twenty-nine.

ARTHUR S. BARNSTEAD,

*Registrar of Joint Stock Companies.*

(Seal)

## APPENDIX A-4



**Bill of Sale from Eugene Creaser Shipping Company,  
Limited, to Eastern Seaboard Steamship  
Agencies, Limited**

Form No. 10a

## BILL OF SALE (BODY CORPORATE)

Official Number	Name of Ship	No., Date and Port of Registry
150960	<i>I'm Alone</i>	21 in 1923, Lunenburg
Whether a Sailing or Steam Ship		Horse Power of Engines, if any
		14 <sup>7</sup> / <sub>10</sub> 200
		Feet      Tenths
Length from forepart of stem, under the bowsprit, to the aft side of the head of the stern post.....		125      6
Main breadth to outside of plank.....		27      0
Depth from top of deck at side amidships to bottom of keel....		10      6
NUMBER OF TONS		
Gross.....	181.70	Registered..... 90.45

NOTE—A Purchaser of a Registered British Vessel does not obtain a complete title until the Bill of Sale has been recorded at the Port of Registry of the Ship; and neglect of this precaution may entail serious consequences.

NOTE—Registered owners or mortgagees are reminded of the importance of keeping the Registrar of Shipping informed of any change of residence on their part.

We, *The Eugene Creaser Shipping Co. Ltd.*, of Lunenburg, N.S., having our principal place of business at Lunenburg, N.S., in consideration of the sum of *One Dollar* paid to us by *The Eastern Seaboard Steamship Agencies Ltd.*, Montreal, Que., the Receipt whereof is hereby acknowledged, transfer sixty-four Shares in the Ship above particularly described, and in her boats, guns, ammunition, small arms and appurtenances to the said *Eastern Seaboard Steamship Agencies, Ltd.*

Further, we, the said *Eugene Creaser Shipping Co. Ltd.*, for ourselves and our successors covenant with the said *Eastern Seaboard Steamship Agencies Ltd.*, and their assigns, that we have power to transfer in manner aforesaid the premises hereinbefore expressed to be transferred, and that the same are free from encumbrances.

In witness whereof we have hereunto affixed our common seal this 29th day of September, One thousand nine hundred and twenty-eight.

The Common Seal of the *Eugene Shipping Co. Ltd.*, was affixed hereunto this 29 day of Sept., 1928.

in the presenece of

G. ARCHIBALD BACHMAN,  
Clerk,  
Lunenburg, N.S.

LEON J. IVERSEN,  
Sect.

\*"His," "her" or "their." †If there is any subsisting Mortgage, or outstanding Certificate of Mortgage, add "save as appears by the Registry of the said Ship."  
‡Description of Witnesses, Directors, Secretary, &c. (as the case may be).

(Endorsement)

BILL OF SALE

SCHR. " I'M ALONE "

Eugene Creaser Shipping Co. Ltd.

to

Eastern Seaboard Steamship Agencies  
Ltd.

Customs Lunenburg, N.S., date Sept.  
28, 1928

Entered and duly registered this day  
at 10 o'clock a.m.

Sgd. S. E. MACK,  
*Registrar.*



## APPENDIX A-5



**Bill of Sale from Eastern Seaboard Steamship Agencies,  
Limited, to Eugene Creaser Shipping Company, Limited**

Form No. 10a

**BILL OF SALE. (BODY CORPORATE)**

Official Number	Name of Ship	No., Date and Port of Registry	
150960	<i>I'm Alone</i>	21 in 1923 Lunenburg, N.S.	
Whether a Sailing or Steam Ship		Horse Power of Engines, if any	
Steam Crude Oil		N.H.P. 14 <sup>7</sup> / <sub>5</sub> B.H.P. 200	
		Feet	Tenths
Length from forepart of stern, under the bowsprit, to the aft side of the head of the stern post.....		125	6
Main breadth to outside of plank.....		27	0
Depth from top of deck at side amidships to bottom of keel....		10	6
NUMBER OF TONS			
Gross.....	181·70	Registered.....	90·45

NOTE—A Purchaser of a Registered British Vessel does not obtain a complete title until the Bill of Sale has been recorded at the Port of Registry of the Ship; and neglect of this precaution may entail serious consequences.

We, *The Eastern Seaboard Steamship Agencies Limited* having our principal place of business at Montreal, Que., in consideration of the sum of *One Dollar* paid to us by *Eugene Creaser Shipping Company Limited of Lunenburg, N.S.*, the Receipt whereof is hereby acknowledged, transfer *Sixty-four* Shares in the Ship above particularly described, and in her boats, guns, ammunition, small arms and appurtenances to the said *Eugene Creaser Shipping Co. Ltd.*

Further, we, the said *The Eastern Seaboard Steamship Agencies Ltd.*, for ourselves and our successors covenant with the said *Eugene Creaser Shipping Co. Ltd.*, and \**their* assigns, that we have power to transfer in manner aforesaid the premises herebefore expressed to be transferred, and that the same are free from encumbrances†.

In witness whereof we have hereunto affixed our common seal this *Twenty-ninth* day of *November*, One thousand nine hundred and *Twenty-eight*.

The Common Seal of the.....was affixed hereunto this *29th* day of *November*, 1928.

in the presence of†

EASTERN SEABOARD STEAMSHIP AGENCIES, LTD.,  
per GEO. J. HEARN,  
Sec. Treas.

NOTE—Registered owners or mortgagees are reminded of the importance of keeping the Registrar of Shipping informed of any change of residence on their part.

\*"His," "her" or "their." †If there is any subsisting Mortgage, or outstanding Certificate of Mortgage, add "save as appears by the Registry of the said Ship."  
‡Description of Witnesses, Directors, Secretary, &c. (as the case may be.)

(Endorsement)

BILL OF SALE

"I'M ALONE"

Eastern Seaboard Steamship Agencies  
Ltd.

to

Eugene Creaser Shipping Co. Ltd.  
Customs Lunenburg, N.S., date Dec.  
8, 1928.

Entered and duly registered this day  
at 11.30 o'clock a.m.

Sgd. S. E. MACK,  
*Registrar.*

(Stamp of Registrar of Shipping,  
Lunenburg, N.S., Dec. 8, 1928).

APPENDIX A-6

Certified Copy of Invoice of Cargo

CONSOLIDATED DISTILLERIES LIMITED

Distillers of

Canadian and American Whiskies  
Ryes and Bourbons

Head Office: Canada Cement Bldg.,  
Phillips Square,  
Montreal, Canada,  
P.O. Box 308,  
Station B

January 29th, 1930.

Mr. GEORGE HEARN,  
Eastern Seaboard Steamship Ltd.,  
485 McGill Street,  
Montreal.

*Re: SS. "I'M ALONE"*

DEAR SIR:

We have your letter of January 25th last, in connection with the above matter and in accordance with your request we send you herewith a certified copy of our invoice of March 26th last, showing 2,500 cases sold to the ss. *I'm Alone*, Belize, British Honduras.

Yours very truly,

CONSOLIDATED DISTILLERIES LIMITED,

J. P. MASTERSON,

*Sales Department.*

# CONSOLIDATED DISTILLERIES LIMITED

Distillers of  
Canadian and American Whiskies  
Ryes and Burbons  
Also Gins

Head Office: Canada Cement Bldg., Phillips Square,

MONTREAL, CANADA,  
P.O. Box 308  
Station "B"

March 26th, 1929.

Sold to SS. "I'M ALONE."  
Address Belize, British Honduras.  
Shipped via—From Belize Stock.

Invoice No. Bel. 15

Cases	Bulk	Description	P.G.	Price	Amount	Total
			\$ cts.	\$ cts.	\$ cts.	\$ cts.
1500	.....	Wm. Penn 32 oz.	3,225 00	12 50	18,750 00	18,750 00
1000	.....	Wm. Penn 16 oz.	2,080 10	13 50	13,500 00	13,500 00
2500			5,305 10	.....	32,250 00	32,250 00

*Certified True Copy*

# CONSOLIDATED DISTILLERIES LIMITED

J. P. MASTERSON,  
*Sales Department.*

Paid  
Mar., 1929,  
Consolidated Distilleries  
Limited  
Per D. Haldane.

## APPENDIX A-7

Certificate of Registration of *I'm Alone*

## CUSTOMS AND EXCISE, CANADA

Port of Lunenburg, N.S.,

July 23rd, 1934.

I, S. E. Mack, Registrar of Shipping at the Port of Lunenburg, N.S., do hereby declare to the following effect as taken this 23rd day of July, 1934, from my Registry of Shipping books:

That the auxiliary schooner *I'm Alone* Official Number 150,960, was duly registered as a British ship of Canadian registry at the port of Lunenburg, N.S., from the 14th October, 1923, up to and including the 22nd day of March, 1929:

That the said auxiliary schooner *I'm Alone* was registered in the name of the Eugene Creaser Shipping Company, Limited, of Lunenburg, N.S., on the 8th December, 1928, and was still registered in the name of the said Company on the 20th August, 1929, when registry was closed at the port of Lunenburg, N.S.

Declared before me at Lunenburg, in the County of Lunenburg, this 23 day of July, A.D. 1934.

RALPH C. STERNE,

A Notary Public  
Province of Nova Scotia.

S. E. MACK,  
Registrar of Shipping.



## APPENDIX B-1

## Affidavit of George J. Hearn, May 23, 1934

Province of Quebec  
District of Montreal

I, George J. HEARN, of the City of Montreal, being duly sworn, depose and say:—

1. I am the owner of sixty shares of fully paid stock in the Eugene Creaser Shipping Co. Limited, a corporation duly organized under the laws of the Province of Nova Scotia;

2. At the time of the sinking of the *I'm Alone* by the United States Revenue Cutter the vessel and cargo were owned by the said Eugene Creaser Shipping Co. Limited;

3. Sometime in the summer of 1928 I was in the market for the purchase of a schooner similar in type to that of the *I'm Alone*, and as I was aware that Christian Iversen, of Lunenburg, N.S., was the owner of the said schooner, I contacted myself with him and proceeded to Lunenburg to discuss the possibility of purchasing the said schooner from him;

4. After Christian Iversen purchased the said vessel in his own name on or about May 10, 1928, he sold the same to the Eugene Creaser Shipping Co. Limited on or about June 26, 1928, which company was the owner thereof at the time I contacted myself with Mr. Iversen;

5. As a result of these negotiations between myself and Mr. Iversen, a deal was consummated and I purchased the said vessel, but in view of the fact that I did not have then organized a company to which I intended to transfer the said schooner, the Deed of Sale was passed from the Eugene Creaser Shipping Co. Limited to the Eastern Seaboard Steamship Agencies Limited for temporary purposes;

6. As already stated, it was my intention to form a corporation in which to vest the ownership of the vessel, and in order to expedite matters and save time, it was agreed between Mr.

Iversen and myself that all the shareholders, owning and controlling all the issued and fully paid-up stock of the Eugene Creaser Shipping Co. Limited, should transfer their shares to me or my nominees, and concurrently with this arrangement, a Bill of Sale was effected whereby the ownership of the boat was transferred to the Eugene Creaser Shipping Co. Limited;

7. The monies used by me for the purchase of the said vessel belonged to me in my own right, and I was not acting as trustee or as representing anyone else;

8. At the time of the sinking of the *I'm Alone*, the sixty shares of stock which I held in the Eugene Creaser Shipping Co. Limited were owned by me in my own right, and not in trust for anyone else;

9. The *I'm Alone* was engaged in the business of selling liquor on the high seas, and, pursuant thereto, the Eugene Creaser Shipping Co. Limited bought from Consolidated Distilleries Limited, for delivery at Belize, the liquor which was on board the vessel at the time of its sinking. The monies in payment for the purchase of the said goods were owned by the Eugene Creaser Shipping Co. Limited, and represented either the capital of the company or monies derived from customers who were indebted to it;

And I have signed:

GEO. J. HEARN

Sworn before me at the City of Montreal, this 23rd day of May, 1934.

L. A. SPERBER,

A Commissioner of the Superior Court for the District of Montreal.

## APPENDIX B-2

## Affidavit of George J. Hearn, September 20, 1929

Province of Quebec

District of Montreal

I, GEORGE J. HEARN, of the City of Montreal, residing at 319 Wilson Avenue, being duly sworn, depose and say:—

1. I am a shareholder of the Eugene Creaser Shipping Company Limited;

2. The shareholders of the said company at the time of the sinking of the auxiliary schooner *I'm Alone*, which was owned by the said company, were as follows, and their holdings of stock were as follows:—

Harris Himmelman.. . . .	1 share
Christian Iversen.. . . .	1 share
Leon J. Iversen.. . . .	1 share
William Wellington Veitch.. . . .	1 share
George J. Hearn.. . . .	60 shares

3. The authorized capital of the said company consists of sixty-four shares, all issued;

4. I am myself a British subject, having been born at Barrie, in the Province of Ontario and Dominion of Canada, on July 8, 1885;

5. All the said shareholders of the Eugene Creaser Shipping Company Limited are, to my knowledge, British citizens, of Canadian birth;

And I have signed:

GEO. J. HEARN.

Sworn before me at the City of Montreal, this 20th day of September, 1929.

ISIDORE BALLON,

A Commissioner of the Superior Court for the District of Montreal.

## APPENDIX B-3

## Affidavit of W. W. Veitch, July 7, 1933

Province of Quebec  
District of Montreal

*In Re: I'M ALONE*

I, WILLIAM W. VEITCH, of the City of Montreal, residing at 4149 Oxford Avenue, Notre Dame de Grace, Montreal, being duly sworn, depose and say:—

1. I am one of the shareholders of the Eugene Creaser Shipping Co. Limited, the owners of the *I'm Alone* which was sunk by a United States Revenue cutter on March 22, 1929;

2. The cargo on the said boat, at the time of the sinking as aforesaid, was also owned by the said Eugene Creaser Shipping Co. Limited;

3. My personal office was in the same premises as that of Mr. George Hearn, in the City of Montreal, in the Coristine Building;

4. I was intimately familiar with Mr. Hearn's business affairs, and I know that the money spent by the Eugene Creaser Shipping Co. Limited was paid by said company through the medium of cash held in a strong-box by Mr. Hearn for and on behalf of the company;

5. The cash monies required for payment of the cargo on the said boat when it was sunk were also advanced by the Eugene Creaser Shipping Co. Limited through Mr. Hearn, who withdrew these monies as required, from the strong-box hereinbefore referred to;

And I have signed:

W. W. VEITCH.

Sworn before me at the City of Montreal, this 7th day of July, 1933.

L. A. SPERBER,

A Commissioner of the Superior Court for the District of Montreal.

















# CLAIM IN RESPECT OF THE SHIP “I’M ALONE”

Statements Submitted by the Agent for the  
United States Pursuant to the Directions  
Given by the Commissioners, Dated  
the 30th of June, 1933

---

Submitted on Behalf of the Government of the United States  
for the Joint Consideration of

The Honourable Willis Van Devanter  
and  
The Right Honourable Lyman Poore Duff



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1934



## CONTENTS

	Page
I. Statement with regard to the ultimate beneficial interests in the vessel and in the cargo.....	1
II. Statement with regard to the claims for compensation made by His Majesty's Government in Canada . . . .	11
III. Appendices:	
1. Certificate of George E. Chamberlin, Consul General of the United States, dated September 9, 1932, respecting Deposit of \$18,000 made by Iversen on September 28, 1928, in the Lunenburg Branch of the Bank of Montreal.....	17
1A. Certified copy of the Deposit Slip made out in the Name of C. Iversen for the Deposit of \$18,000 in the Lunenburg Branch of the Bank of Montreal.. . . .	19
2. Affidavit of Arthur W. Vose, April 14, 1934, with respect to currency deposited by Iversen in the Lunenburg Branch of the Bank of Montreal..	20
3. Certificate of purchase signed by Hearn as Manager for the Eastern Seaboard Steamship Agencies, Ltd., September 28, 1928.....	22
4. Affidavit of Marvin J. Clark, April 4, 1932, of certain facts with respect to the purchase of the <i>I'm Alone</i> within his knowledge.....	23
5. Certified copy of passenger records of the Boston & Yarmouth Steamship Co., Ltd., showing that Clark was the occupant of room no. 239 on the S.S. <i>Yarmouth</i> under sailing date of September 26, 1928.....	32a
5A. Certified copy of passenger records of the Boston & Yarmouth Steamship Co., Ltd. (continued)..	32b
6. Affidavit of John B. Magnus, April 20, 1934, to the effect that in April 1928 he sold the <i>I'm Alone</i> to Christian Iversen for \$10,000.....	33
7. Affidavit of Charles M. Barnett, March 29, 1934, fixing the value of the schooner <i>I'm Alone</i> at \$20,000 .. . . .	45
8. Affidavit of Captain Neil Hall, April 14, 1934, fixing the value of the schooner <i>I'm Alone</i> at not exceeding \$20,505.....	54

	Page
9. Affidavit of John I. Snow, May 21, 1934, fixing the value of the schooner <i>I'm Alone</i> at \$10,000---	56
10. Affidavit of Edgar Roderic Williams, December 20, 1933, fixing the value of the cargo at Hamilton, Bermuda, at \$43,549.58-----	61

# I

## STATEMENT WITH REGARD TO THE ULTIMATE BENEFICIAL INTERESTS IN THE VESSEL AND IN THE CARGO

1. In submitting this Statement the Agent for the United States is complying with the direction of the Commissioners communicated in their Joint Interim Report bearing date the 30th of June, 1933.

2. The contention of the United States is that the beneficial or ultimate ownership of the *I'm Alone* and of the shares of the corporation owning the ship was at all times, subsequent to September 28, 1928, down to the date of the sinking of the vessel, March 22, 1929, in citizens of the United States, and that Canadian registry was resorted to for the purpose of gaining for the vessel the protection of the British flag in the course of her rum-running operations.

3. It is further the contention of the United States that the ownership of the cargo of the vessel at all times subsequent to its purchase at Belize, British Honduras, on March 12, 1929, down to and including the date of the sinking of the vessel, was in citizens of the United States.

4. With respect to the beneficial ownership of the vessel, the contention of the United States is specifically as follows:

(1) Immediately prior to September 28, 1928, the *I'm Alone* was owned by one Christian Iversen. [REDACTED]

[REDACTED] Between April 28, 1928, and June 26, 1928, the vessel was registered in the name of Iversen. On the latter date Iversen, by bill of sale, transferred the title to the vessel to the Eugene Creaser Shipping Co., Ltd., of Lunenburg, Nova Scotia. This was a company all the stock in which was owned by Iversen and associates. After the transfer of title by Iversen to this company, he continued to control the vessel as he had done before.

(2) On September 28, 1928, Iversen sold all right, title and interest in the vessel to one Marvin J. Clark, an American

Blackwell  
in  
Canada  
City



citizen, who, in the transaction, was acting for himself, for one Daniel Halpin (alias Danny Hogan), also an American citizen, and for one Frank H. Reitman, also an American citizen. The purchase price paid by Clark to Iversen was \$18,000. Clark's interest in the purchase was one-fourth, Hogan's was one-fourth, and Reitman's was one-half. The consideration for this sale was paid at Lunenburg by Clark to Iversen in American currency. Clark also paid the sum necessary to cover the rate of exchange which, at that time, was favorable to Canadian currency. The American currency paid by Clark to Iversen was, on the same day, deposited by Iversen in the Lunenburg Branch of the Bank of Montreal. A copy of the deposit slip is attached hereto and marked "Appendix 1A". The currency so deposited by Iversen was forthwith shipped by the Bank of Montreal, in accordance with the usual practice with respect to American currency, to its correspondent, the Merchant's National Bank of Boston, Mass. See affidavit of Arthur W. Vose, "Appendix 2". Clark arranged with Iversen that the title to the boat should be taken by a Canadian corporation, styled Eastern Seaboard Steamship Agencies, Ltd., which was a paper corporation organized by attorneys for John B. Magnus, an American citizen of Boston, Massachusetts, with dummy stockholders, the stock being actually owned by Magnus. The company was managed by one George J. Hearn, a Canadian citizen who was a boat broker at Montreal, Canada. In the registration of the *I'm Alone* in the name of the Eastern Seaboard Steamship Agencies, Ltd.,<sup>1</sup> Hearn acted for Clark and the other American purchasers, and received from Clark in cash \$500 in consideration of his services. See certificate of purchase signed by Hearn as Manager for the Eastern Seaboard Steamship Agencies, Ltd., "Appendix 3". At the hearing before the Commissioners the Agent for the United States will produce a photostat copy of the report of the Registrar General of Shipping and Seamen in London, and of the Register of the *I'm Alone*, showing all changes in ownership of the vessel since it first

<sup>1</sup> See pp. 34-35 and 40, for circumstances under which Eastern Seaboard Steamship Agencies, Ltd., was incorporated for John B. Magnus.

acquired British registry, with final registration in the name of the Eugene Creaser Shipping Company, Limited, on November 29, 1928.

5. In support of the contentions of the Government of the United States respecting ultimate beneficial ownership of the *I'm Alone*, at the hearing before the Commissioners the Agent for the United States will produce the affidavit of said Marvin J. Clark, which embodies statements made by him on its date to the Agent for the United States. "Appendix 4". Within three months after making this affidavit, Clark was murdered. At the date of his affidavit, some 3½ years later than the date of purchase of the *I'm Alone* at Lunenburg, Clark specified the 15th of October, 1928, as about the date of his trip to Lunenburg and the purchase of the boat. He referred, however, for greater particularity, to the records of the Boston & Yarmouth Steamship Co., Ltd., to ascertain the exact date of the sailing of the S.S. *Yarmouth*, on which he proceeded from Boston to Yarmouth. This record has since been investigated, and at the hearing before the Commissioners the Agent for the United States will produce a photostat copy showing that Clark was the occupant of room no. 239, under sailing date from Boston of September 26, 1928. A copy of said photostat appears as "Appendices 5 and 5A". The attention of the Commissioners is called to the affidavit of Arthur W. Vose above referred to ("Appendix 2"), which is alleged by the United States to establish the fact that the purchase price of the *I'm Alone* was paid by Americans in American currency, substantially as narrated in the Clark affidavit, and not by Canadian citizens, as contended by the Government of Canada.

6. With further reference to American beneficial ownership and also with reference to the ownership of the cargo of the *I'm Alone*, it is the contention of the United States that subsequent to September 28, 1928, the movements of the *I'm Alone* were at all times directed by citizens of the United States from New York and from other points in the United States; that instructions for the purchase of her cargo and the funds required for the same were supplied by the same

persons and from the same places; and that the cargo at the time of the sinking was, in fact, American-owned.

7. More specifically, the Government of the United States contends that Hogan and associates, for whose account the vessel was bought from Iversen, maintained in New York with the Western Union Telegraph Company, registered cable addresses as follows: "HARFORAN", "MOCANA", and "GAZAMO". Instructions were given by Hogan and associates to the Western Union for the delivery at the Hotel McAlpin of telegrams and cablegrams so addressed, and the operator, one Otto Weishaar, was instructed by Hogan and associates, upon receipt of telegrams or cables so addressed, to communicate the fact by telephone to various places in New York City where Hogan and associates were residing. At the hearing before the Commissioners the Agent for the United States will produce photostat copies of the applications for these registered addresses from the Central Bureau for Registered Addresses, and also a duly certified copy of the testimony to the above effect given by said Otto Weishaar in the proceedings held in the Southern District of New York, on November 21, 1929, in the case of *United States v. John Doe*.

8. It is the contention of the United States that the *I'm Alone*, after her purchase as above by American citizens, cleared from Halifax on November 4, 1928, with Forrest Francis Allen, an American citizen, as supercargo, and first arrived out at Belize, British Honduras, in or about December, 1928; that she subsequently, on various voyages, operated as a rum-runner between Belize and points on the coast of Louisiana, always acting under instructions from her American owners, and always with liquor on board bought by American citizens with American money; that on the 6th of March, 1929, she arrived in Belize in ballast and on the 12th of March began her last voyage by clearing from Belize with cargo ostensibly for Bermuda. At the hearing before the Commissioners the Agent for the United States will produce the affidavit of Consular Clerk Adolph C. Odendahl, showing "CARMELHA" as the registered cable address of C. A. Melhado & Sons, Belize, British Honduras, said Mel-

hado & Sons being the agents of the vendors of the liquor in the case of the voyages above referred to. The Agent for the United States will also produce photostat copies of cablegrams passing between "MOCANA", New York, and "CAR-MELHA", Belize, between November 28, 1928, and March 14, 1929. These cable messages were sent in code; decoded copies of them are hereinafter printed. The symbols "YINOS", "YICKY", "YEDEB", "YIDEG", "YIDAF", are designations of types and brands of liquor. At the hearing before the Commissioners the Agent for the United States will submit duly certified copies of ship's reports and of "Entries Outwards" from the office of the Collector of Customs in Belize, showing the relation between the liquor specified in the cables and the liquor actually put on board the ship prior to her final clearance from Belize on or about March 12, 1929. Said cablegrams are as follows:

*Nov. 28, 1928.*

HBA61 24 Wireless—NS Belize BH 28 110P

Mocana

New York (NY)

Referring to your letter 17th instant OLUCA (garble) Consular certificate impracticable. No consul this port. American Consulate certifies documents. Some possibility of arranging for shipment YIDEG, delivery Southern port near here 3rd January if ordered immediately. Must deposit about half. Approximate price 8 dollars case stop. Can deliver immediately this port 1800 YIDEG, 9 dollars and 50 cents. Also 1000 Dutch YIDAF, 7 dollars. Subject immediate reply.

[No signature]

*Dec. 5, 1928.*

HBA81[?] 5 Wireless—NS Belize BH 5 416P

Mocana

New York

Arrived. Telegraph instructions. You should change position.

[No signature]

*Dec. 6, 1928.*

HBA68 11 Wireless—NS Belize BH 6[?] 215P

Mocana

New York (NY)

Cannot send or receive message. Operator no good. Send 1100 dollars, expenses and fuel. Ready to sail Friday morning. Meet me 12th December.

[No signature]

*Dec. 7, 1928.*

HBA30 7 Wireless—NS Belize BH 7 1036A

Mocana

New York (NY)

Cleared loaded with goods ordered. Cannot get another operator. Have received instructions. Telegraphed to you YOMAS.

[No signature]

*Dec. 21, 1928.*

CDU 408 18 Cable NI NewYork NY 21 426P

Carmelha

Belize, B.H.

Load at shipyard 1000 YINOS, 300 YICKY, 200 YEDEB. Will pay for YEDEB, also duties, commission, and charges on YINOS, YICKY to you; balance at ZYHUG. Instruct YASNO will require him to be on position 29th December YOFEM. How much money required?

[No signature]

*Dec. 22, 1928.*

HBA33 11 Wireless—NS Belize BH 22/NFT

Mocana

New York (NY)

\$500 dollars approximate amount. Includes 200 YEDEB. Arriving 24th December. Can supply immediately 100 dwarf COCUX 50, 1260 par YOJYV, YEDBE.

[No signature]



*Dec. 22, 1928.*

HBA87 9 Wireless—NS Belize BH 22 1145A

Mocana

New York (NY)

Arrived. Owing to Holidays, sailing date uncertain. Are telegraphing later. Require additional 1000 dollars fuel, provisions, total amount 9500.

[No signature]

*Dec. 22, 1928.*

CDU 527 9 Wireless CD NewYork NY 22 837P

Carmelha

Belize, B.H.

It is of the utmost importance vessel be on position 31st December. Make arrangements to the effect. Substitute YINOS if necessary. YOLRA Monday. Reply immediately.

[No signature]

*Dec. 23[?], 1928.*

84HB T 7 WIX—NS Belize BH 445P

Mocana

New York

YOKUV 24th December. Sailing following day. Advise ZYHUG authorize delivery YEDBE.

[No signature]

*Dec. 24, 1928.*

CDU 257 Cable LH NewYork NY 7 24/1033

Carmelha

Belize, B.H.

Change order to 1700 YINOS, 300 YICKY. Sail by tomorrow YOKWY.

[No signature]

*Dec. 25, 1928.*

CDU 123 Cable CV NewYork NY 5 25/139P

Carmelha

Belize, B.H.

YOKER when will he arrive on position? Do you want any more money?

[No signature]

*Dec. 26, 1928.*

HBA43 6 Wireless—NS Belize BH 26 800A

Mocana

New York

Sailed 25th December—31st December. Loaded 1700 YINOS, 290 YICKY.

[No signature]

---

*Jan. 29, 1929.*

HBA69 6 Wireless—NS Belize BH 29 427P

Mocana

New York

Arrived. Some repairs necessary. Will leave 2nd February. Telegraph instructions.

[No signature]

---

*Jan. 30, 1929.*

HBA11 8 Wireless—NS Belize BH 30 810A

Mocana

New York (NY)

YIZAB, ZYRLA, 4000 dollars. Shipment of 2000 YINOS, 800 YINRA and also other expenses.

[No signature]

---

*Jan. 30, 1929.*

HBA37 8 Wireless—NS Belize BH 30 1025A

Mocana

New York (NY)

Referring to telegrams of 29th, 8000 dollars additional required. Total amount 12000 dollars. Shall we pack in sacks YIOVB.

[No signature]

---

*Jan. 30, 1929.*

NB 103 Cable LH NewYork NY 5 30-1258P

Carmelha

Belize, B.H.

YOKWY, YEAHD. How many YEDEB can I get?

[No signature]

*Jan. 30, 1929.*

HBA82 4 Wireless—NS Belize BH 30 NFT

Mocana

New York

Referring to telegram of 30th, shipping 335 YEDEB.

[No signature]

*Feb. 1, 1929.*

HBA79 6 Wireless—NS Belize BH 1 NFT

Mocana

New York

YOCAR 1300. Remit by wire. 850 dollars approximate amount owing for expenses.

[No signature]

*Feb. 3, 1929.*

40HB T 4 Wireless—NS Belize BH 625P

Mocana

New York

Sailed 3rd February—10th February.

[No signature]

*Mar. 4, 1929.*

HBA96 9 Wireless—NS Belize BH 4 NFT

Mocana

New York

WYBAB. Cannot supply WYELM. Can supply 50 YIBUH, 50 YICFE, 300 WYDOH, also WYERS, WYEMN.

[No signature]

*Mar. 6, 1929.*

HBA80 11 Wireless—Belize BH 6 212P

Mocana

New York (NY)

WUVUR. Advise WUZLO telegraph instructions. Deliver requirements. Deposit with WUZLO 11250 dollars. WUYVY 8000 dollars. Balance required for Captain, crews' wages.

[No signature]

BELIZE, B.H., *Mar. 14, 1929.*

Mocana

New York

Cleared, yesterday afternoon.

[No signature]

9. Upon the basis of the evidence above summarized the Government of the United States will contend that the facts respecting the purchase of the *I'm Alone* and her cargo and the control of her movements, at all times subsequent to September 28, 1928, are consistent only with beneficial ownership in both vessel and cargo by citizens of the United States, and that Canadian registry was resorted to by them solely as a device or screen to afford them a measure of protection in the course of their smuggling enterprise.

Respectfully submitted,

GEORGE WHARTON PEPPER

*Agent for the United States*

## II

### STATEMENT WITH REGARD TO THE CLAIMS FOR COMPENSATION MADE BY HIS MAJESTY'S GOVERNMENT IN CANADA

1. In submitting this statement the Agent for the United States is complying with the direction of the Commissioners communicated in their Joint Interim Report bearing date the 30th of June, 1933.

2. The Canadian Claim, as set forth in the statement submitted by the Canadian Agent, embodies twelve groups of items. The first group is concerned with compensation claimed for the loss of the schooner and her equipment and furniture. The second is concerned with the cargo. The third is concerned with the cost of repatriation of the crew and other incidental expenses including legal fees and disbursements. The fourth to the eleventh inclusive, are concerned with compensation claimed for losses alleged to have been sustained by the master and members of the crew. The twelfth is concerned with the claim submitted by the widow of Léon Mainguy, a French citizen and a member of the crew, who was drowned at the time of the sinking of the *I'm Alone*. In connection with the first, fourth, and all subsequent groups of claims, a nonliquidated item for "General Compensation" is included.

3. With respect to the claims above described the position of the Government of the United States is as follows:

(1) As to the schooner and her equipment, her aggregate value at the date of the sinking was not in excess of \$20,000.

As to the value of the ship's furniture and stores, the Government of the United States is without information and asks for proof thereof.

(2) As to the cargo (and subject to the contention that the owners thereof were not Canadian citizens on whose behalf only a claim can be effectively presented by the Canadian Government), the liability of the Government of the United States, if any, cannot exceed the cost of the cargo at



Belize, British Honduras; or, at most, the value which the cargo would have had on safe arrival at the declared destination of the vessel, which was Hamilton, Bermuda. The United States will not, under any circumstances, concede that the cargo had any additional recoverable value either at the place where the schooner was hailed or the place where she was sunk.

(3) As to claims for compensation for cost of repatriation of crew, and other like expenses, the Government of the United States denies liability for any such expenses as would nevertheless have been incurred had the vessel been brought into port and condemned; but (subject to the general denial of liability) will concede that if any compensation is payable it will be such only as resulted from the sinking of the vessel as distinguished from condemning her after she had been brought into port.

(4)-(11) As to the claims by individuals, the Government of the United States concedes that if any compensation is payable it should be made for the loss of the personal effects of Canadian citizens on board the *I'm Alone*; and in this connection attention is called to the fact that the Canadian Statement of Claim makes no averment of Canadian nationality in the case of Jens Jansen and of Edward Fouchard, as to whom it is requested that an averment of Canadian citizenship be made, if such be the fact.

As to the amount of compensation claimed by individuals for loss of personal effects, etc., the Government of the United States requests the production of the claimants before the Commissioners in order that they may be subjected to cross-examination upon their claims which upon their face appear to be excessive.

(12) As to the claim of Amanda Mainguy, the position of the Government of the United States is that the Commissioners should not in this proceeding recognize or give effect to a claim submitted on behalf of a claimant who is not a Canadian citizen.

(13) As to claims for general compensation in each of the several groups of items, the position of the Government of

the United States is that, the vessel being confessedly engaged in rum-running, and the nature of her activity being known to her master and all on board, no claim for general compensation can effectively be made, excepting for loss or damage sustained through the intentional sinking of the vessel as distinguished from the loss or damage which would have been sustained had the sinking occurred as an incident of boarding, searching, seizing, and bringing into port in the exercise of the force reasonable and necessary for such purpose.

4. (a) With respect to the value of the schooner, the following data are submitted herewith:

(1) Affidavit of John B. Magnus, dated April 20, 1934, to the effect that in April 1928 he sold the schooner *I'm Alone* to Christian Iversen for \$10,000 (appendix 6).

(2) Affidavit of Marvin J. Clark, dated April 4, 1932, to the effect that in the autumn of 1928 he bought the schooner *I'm Alone* from Christian Iversen for \$18,000 (appendix 4).

(3) Affidavit of Charles M. Barnett, dated March 29, 1934, fixing the value of the schooner *I'm Alone* at \$20,000 (appendix 7).

(4) Affidavit of Captain Neil Hall, dated April 14, 1934, fixing the value of the schooner *I'm Alone* at not exceeding \$20,505 (appendix 8).

(5) Affidavit of John I. Snow, dated May 21, 1934, fixing the value of the schooner *I'm Alone* at \$10,000 (appendix 9).

If the fact of the sale of the vessel at the time specified for \$18,000 is controverted, the Government of the United States will request the production before the Commissioners of the deposit slips and other vouchers from the Bank of Montreal (Lunenburg Branch), through which the transaction was cleared, which in turn remitted \$18,000 in American currency to the Merchants National Bank of Boston, Massachusetts, on October 1, 1928, as shown by the affidavit of Arthur W. Vose (appendix 2).

(b) As to the cost of cargo at point of shipment (Belize, British Honduras), the Commissioners are referred to the report of "Entry Outwards" from the port of Belize, set forth on page 29 of the Statement of Claim submitted by the Canadian Agent, disclosing a total purchase price of \$39,665.25. As to the market value as of that date at Hamilton, Bermuda, there is hereto annexed the affidavit of Edgar Roderic Williams, to which the Commissioners are respectfully referred (appendix 10).

Respectfully submitted,

GEORGE WHARTON PEPPER

*Agent for the United States*

### III

#### APPENDICES

	Page
1. Certificate of George E. Chamberlin, Consul General of the United States, dated September 9, 1932, respecting Deposit of \$18,000 made by Iversen on September 28, 1928, in the Lunenburg Branch of the Bank of Montreal	17
1A. Certified copy of the Deposit Slip made out in the Name of C. Iversen for the Deposit of \$18,000 in the Lunenburg Branch of the Bank of Montreal	19
2. Affidavit of Arthur W. Vose, April 14, 1934, with respect to currency deposited by Iversen in the Lunenburg Branch of the Bank of Montreal	20
3. Certificate of purchase signed by Hearn as Manager for the Eastern Seaboard Steamship Agencies, Ltd., September 28, 1928	22
4. Affidavit of Marvin J. Clark, April 4, 1932, of certain facts with respect to the purchase of the <i>I'm Alone</i> within his knowledge	23
5. Certified copy of passenger records of the Boston & Yarmouth Steamship Co., Ltd., showing that Clark was the occupant of room no. 239 on the S.S. <i>Yarmouth</i> under sailing date of September 26, 1928	32a
5A. Certified copy of passenger records of the Boston & Yarmouth Steamship Co., Ltd. (continued)	32b
6. Affidavit of John B. Magnus, April 20, 1934, to the effect that in April 1928 he sold the <i>I'm Alone</i> to Christian Iversen for \$10,000	33
7. Affidavit of Charles M. Barnett, March 29, 1934, fixing the value of the schooner <i>I'm Alone</i> at \$20,000	45
8. Affidavit of Captain Neil Hall, April 14, 1934, fixing the value of the schooner <i>I'm Alone</i> at not exceeding \$20,505	54
9. Affidavit of John I. Snow, May 21, 1934, fixing the value of the schooner <i>I'm Alone</i> at \$10,000	56
10. Affidavit of Edgar Roderic Williams, December 20, 1933, fixing the value of the cargo at Hamilton, Bermuda, at \$43,549.58	61





## APPENDIX 1

Certificate of George E. Chamberlin, Consul General of the United States, dated September 9, 1932, respecting Deposit of \$18,000 made by Iversen on September 28, 1928, in the Lunenburg Branch of the Bank of Montreal

DOMINION OF CANADA PROVINCE OF NOVA SCOTIA CITY AND COUNTY OF HALIFAX CONSULATE GENERAL OF THE UNITED STATES OF AMERICA	} SS:
---	-------

I, George E. Chamberlin, Consul General of the United States of America at Halifax in the Province of Nova Scotia, Dominion of Canada, duly commissioned and qualified, do hereby certify that on Wednesday, September 7, 1932, I proceeded to Lunenburg, Nova Scotia, in the district of this Consulate General, to obtain, if possible, from the Manager of the Lunenburg Branch of the Bank of Montreal, Mr. H. E. Mercer, a sworn statement as to the date of a deposit of eighteen thousand dollars (\$18,000.) in that Bank by Captain Christian Iverson, the amount claimed to have been received by him from the sale of the vessel *I'm Alone*; the kind of currency deposited—whether Canadian or American—and a copy of the deposit slip.

I further certify that the attached copy of the deposit slip marked "Exhibit A" <sup>1</sup> shows that C. Iverson deposited on September 28, 1928, in the Bank of Montreal at Lunenburg, of which Mr. H. E. Mercer is Manager, the sum of eighteen thousand dollars (\$18,000.), consisting of twenty-five one-hundred dollar bills, eleven five-hundred dollar bills and ten one-thousand dollar bills; that the attached copy of the original deposit slip is filled in in the handwriting of Mr. Mercer, the Manager of the Bank of Montreal; that I

<sup>1</sup>[See Appendix 1A.]

compared the copy with the original deposit slip shown me and stated by Mr. Mercer to be the original made out at the time of the deposit and found that the date, name of the depositor, number of and denominations of the bills, and the total amount all agreed with the original deposit slip; that the original had plainly impressed upon it in purple ink the teller's date stamp showing distinctly the date of September 28, 1928; that the slip also bore initials stated by Mr. Mercer to be those of the teller receiving the deposit, and that no further information could be obtained concerning the deposit without the written consent of Captain Christian Iverson, which he refused to give.

IN WITNESS WHEREOF I have hereunto  
set my hand and affixed the seal of the Consu-  
late General of the United States of America  
at Halifax, Nova Scotia, this ninth day of  
September, 1932.

(Seal of the American  
Consulate General at  
Halifax)

Service No. 737  
No Fee Prescribed

GEORGE E. CHAMBERLIN  
*Consul General of the United  
States of America*

# APPENDIX 1A

Certified Copy of Deposit Slip made out in the Name of C. Iversen  
for the Deposit of \$18,000 in the Lunenburg Branch of the Bank  
of Montreal

m 637—19845  
nted in Canada

Exhibit "A"

BANK OF MONTREAL

Sept 28 1928

CREDIT  
ACCOUNT OF  
*C. Iversen*

WITH

DEPOSITED BY *L. J. Iversen* DOLLARS 100

IN CHEQUES	EXCHANGE	CASH	\$	CTS.
		X 1		
		X 2		
		X 5		
		X 10		
		X 20		
		X 50		
		25 x 100	2500	
		11 x 500	5500	
		10 x 1000	10000	
		TOTAL NOTES	18000	
		GOLD		
		SILVER		
		LESS EXCHANGE		
		COPPER		
		TOTAL CHEQUES		
		TOTAL DEPOSIT \$	18000	
TELLER'S INITIALS				

## APPENDIX 2

### Affidavit of Arthur W. Vose, Dated April 14, 1934

I, the undersigned, Arthur W. Vose, Auditor of The Merchants National Bank, Boston, Massachusetts, on oath depose and say that on October 1, 1928, The Merchants National Bank, Boston, Mass., received from the Bank of Montreal, Lunenburg, Nova Scotia, for credit to the Bank of Montreal, New York City, the sum of Eighteen Thousand Dollars (\$18,000) in United States currency in Parcel No. 82 from Lunenburg, Nova Scotia, under cover of letter from the Bank of Montreal, Lunenburg, Nova Scotia, Branch dated September 28, 1928, and that the same United States currency was in turn on October 1, 1928, deposited in the Federal Reserve Bank of Boston, Mass.

ARTHUR W. VOSE, *Auditor*

*The Merchants National Bank of Boston, Mass.*

Personally appeared before me at Boston, Mass., this 14th day of April, 1934, the aforesaid Arthur W. Vose who subscribed and took oath to the above.

[SEAL]

W. M. HUNT

*Notary Public*

### THE COMMONWEALTH OF MASSACHUSETTS

---

OFFICE OF THE SECRETARY

BOSTON, *April 16, 1934.*

I HEREBY CERTIFY, That at the date of the attestation hereto annexed,

WALDO M. HUNT

whose name is signed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking the same, a NOTARY PUBLIC for the said Commonwealth duly commissioned and constituted; that to his acts and

attestations, as such, full faith and credit are and ought to be given in and out of court; that as such Notary Public, he is by law authorized to administer oaths and take acknowledgments of deeds or conveyances of lands, tenements or hereditaments and other instruments throughout the Commonwealth to be recorded according to law; and that I verily believe his signature to the annexed attestation to be genuine.

IN TESTIMONY OF WHICH, I have hereunto affixed the GREAT SEAL OF THE COMMONWEALTH the date above written.

(Seal of the  
Commonwealth  
of Mass.)

F. W. COOK  
*Secretary of the Commonwealth*



### APPENDIX 3

#### Certificate of Purchase Signed by Hearn as Manager for the Eastern Seaboard Steamship Agencies, Ltd., September 28, 1928

LUNENBURG, N.S., *Sept. 28, 1928.*

We the undersigned have today bought the Schr. *I'm Alone* as she now lays at Robin, Jones & Whitman's wharf, free of all commissions from Capt. C. Iversen, President of the Eugene Creaser Shipping Co. Should anyone make any claim for commission, same must be collected from the Eastern Seaboard Steamship Agencies, Ltd., 231 Corristine Bldg., Montreal, Que.

EASTERN SEABOARD STEAMSHIP AGENCIES, LTD.

GEO. J. HEARN

*Manager*

## APPENDIX 4

### Statement Made by Marvin J. Clark of Certain Facts with Respect to the Purchase of the Auxiliary Schooner *I'm Alone* Within His Knowledge

DISTRICT OF COLUMBIA : ss

WASHINGTON, D.C.

*April 4, 1932.*

About October 15,<sup>1</sup> 1928 I was in New York City. I had known Dan Hogan for a number of years. I had also known Frank H. Reitman for four or five years. I had knowledge of their connection with the liquor business. At that time I was residing at 190 Decker Avenue with a Mr. and Mrs. J. J. Stanton. On the date in question I received a message to the effect that Dan Hogan had called Mrs. Stanton and requested that I should come over to Florence Clark's apartment which I believe was at 318 West 48th Street, New York City. In response to this message I went to the apartment of Florence Clark who, by the way, is in no wise related to me. At this apartment I found Dan Hogan, Frank H. Reitman and Florence Clark. There were others in the apartment but they did not take any part in our conversation and in fact I do not know who they were as they were in other rooms.

Hogan stated that he and Reitman wanted to buy the boat *I'm Alone* and wanted me to go up and inspect this boat prior to purchase. Apparently they had some knowledge concerning this boat and knew that it was for sale. From things that developed later I believe they had been in correspondence with George J. Hearn of Montreal concerning the purchase of the boat. As I had previously had business relations with both Reitman and Hogan, the matter did not require a great deal of discussion. The conclusion was

<sup>1</sup> [See appendices 1A, 2, 3, 5, and 5A, from which it appears that the month was September.]

reached that in view of my experience in building and handling boats, I should go to Lunenburg, Nova Scotia, and look the *I'm Alone* over and see if she was in a fit and seaworthy condition. They apparently had information that this boat was being offered for \$18,000 and that the purchase could be arranged through George J. Hearn. There are always incidental expenses which arise in connection with such a transaction and, although the price of the boat was to be only \$18,000, the agreement was that Reitman should put up \$10,000, Hogan \$5,000 and myself \$5,000, to be used in the purchasing of this vessel. Reitman at that time was a man worth a great deal of money. He could have easily purchased this vessel alone but wanted associated with him Hogan and myself because of our experience in handling vessels in this traffic. Before I left this apartment, Hogan handed me \$15,000. \$10,000 of this money had been given to Hogan by Reitman in my presence. I accepted the \$15,000 from Hogan and the same afternoon went to a safety deposit box in a bank on Staten Island where I withdrew \$5,000 of my own money from the safety deposit box which I had in my own name and that of Mrs. J. J. Stanton. I am a little bit at a loss to give the name of that bank as we had a safety deposit box in two different banks. I believe these two banks were the Port Richmond National Bank and another Bank which was directly across the street. Both of these banks were on Richmond Avenue and it may be that they are the only two banks conveniently near that vicinity.

For some time Florence Clark had intimately known Mrs. John J. Stanton. The day prior to my having met Hogan and Reitman, as referred to above, Florence Clark telephoned to Mrs. Stanton and inquired of her as to how much money I might have and as to whether I was able to make an investment of as much as \$5,000 in a venture which would turn over 100% right away. Before I went over and met Hogan and Reitman, Mrs. Stanton had already told me of that conversation.

It was after I had met Hogan and Reitman and they had turned over the \$15,000 to me that I returned to Port Rich-

mond and got the \$5,000 out of our safety deposit box. Although both of these deposit boxes were jointly in my name and that of Mrs. J. J. Stanton, Mrs. Stanton had no interest in the contents of the box. I had rented this box jointly because I realized the hazardous occupation I was following and wanted my affairs in such shape that Mrs. Stanton could have access to the box in case of my death. I have stated above that I rented these boxes. As I recall I had Mrs. Stanton arrange for the rental of these two safety deposit boxes. Each of us had access to it. From memory now I would say that we had rented these boxes for about one year prior to October 1928. We still have one of those safety deposit boxes.

Of the money turned over to me by Reitman and Hogan most of this currency was in thousand dollar bills. There was some of it however, in \$500 bills and as I recall none smaller than \$500. My own money which I withdrew from the safety deposit box was in \$1,000 bills. On the afternoon when this money was withdrawn from our safety deposit box, both Mr. and Mrs. Stanton went to the bank with me but only Mrs. Stanton went into the safety deposit vault with me. I had previously made a list of the numbers of these large bills which I had at Stanton's home. After we returned to the Stanton home Mrs. Stanton and myself checked off the numbers of those bills from that list. There was approximately \$10,000 left in that safe deposit box after I had withdrawn this \$5,000. It is quite possible that Mrs. Stanton might still have the list of the numbers of this currency and from that can be established the fact that this currency was carried to Lunenburg and used in the purchase of the *I'm Alone*. At this time Mrs. Stanton has both keys to the one box which we are still renting.

If any investigation is made concerning this safe deposit box, it should be taken into consideration that Dan Hogan and Florence Clark lived together for about two years and continued together for about one year after the purchase of this boat, also that Mrs. Tom Pistolesi is an intimate friend of Mrs. Stanton. Naturally I cannot be definite as to the day of the week that this conference with Hogan and Reitman

took place but as I recall it was either on Friday or Saturday before I went to Nova Scotia. At this time Hogan and Florence Clark were usually spending the week-end at some place up in the Catskill Mountains and I had to plan to be in Boston to catch the boat from Boston to Yarmouth and this boat only sails twice a week. I believe at the time I made the trip I caught the boat leaving on Tuesday of that week. Consequently, possibly three or four days intervened between the handing of this money to me and my departure for Boston. In explanation why I immediately withdrew the money from this safe deposit box and did not proceed to Nova Scotia until three or four days later, I will say that my first plan was to go up by rail. Later I concluded to go by boat from Boston and did so.

The passenger records of the boat between Yarmouth and Boston would certainly be available for the exact date of my trip [see appendices 5 and 5A], also the Canadian Immigration records which are filled out before my departure from Boston. Both of these records will show that I traveled under my own name. I believe this immigration record is made by the Canadian Immigration Service before the boat departs from Boston. I recall that I showed them my Navy discharge papers as identification.

There were many passengers on the boat from Boston to Yarmouth although I recall no one that I recognized or knew. We sailed from Boston at about 2:15 p.m. and arrived at Yarmouth at daylight the following morning. I at once proceeded by rail from Yarmouth to Lunenburg and arrived at Lunenburg about 2:30 p.m. the same day.

I had previously met Mr. George J. Hearn in Montreal. When I arrived at Lunenburg, Mr. Hearn was on the station platform, anxiously observing the passengers who disembarked. I spoke to Mr. Hearn and shook hands with him. He apparently did not recall having previously met me. He inquired as to whether there were any passengers on the boat from New York, also as to who may have crossed from Boston. I told him that I knew no one that came over on that voyage. In a more or less casual way I asked him if there were any boats in the harbor that were being offered for



sale. He said "No". I then made a specific inquiry concerning the *I'm Alone*, saying I understood that it was being offered. Hearn said that it was being offered for sale but that it was no good, that both the engine and the hull were in bad condition and that she was a wreck.

When Hogan gave me the \$15,000 in New York, he also gave me a letter addressed to George J. Hearn. After the conversation between Mr. Hearn and myself referred to above, I handed him this letter of introduction from Hogan and he at once changed his statements with respect to the *I'm Alone* and we both accepted it as a joke that he had for business purposes been running down that boat. We both proceeded to the Ich Deen, where I registered, using my own name. I may not be giving you the correct spelling of that hotel but it can easily be checked by investigation as it means "Restful Night" or something like that. It is just possible that I may have registered at this time under a fictitious name. Almost at once after I registered Hearn and I went down to Iversen's dock where the *I'm Alone* was tied. This dock is only a few hundred yards distance from the hotel. While we were looking the boat over, Iversen came out to the boat. I had known Iversen for a good many years and had outfitted with him and on previous occasions. As the day was pretty well gone, I only made a superficial inspection of the boat that afternoon. Hearn and myself returned to the hotel together. Shortly thereafter I returned alone to Iversen not only to further inspect the boat but to learn from Iversen as to her true condition. At this time I believe Iversen told me that he bought the *I'm Alone* some six or eight weeks prior at Yarmouth or to the south of Lunenburg and had towed her up to Lunenburg where he had completely overhauled her. He had hauled her out and made extensive repairs to the engine all of which he had personally supervised. Knowing Iversen as I did I placed a good deal of confidence in what he told me and yet on the following day I had him submit to me a list of the actual repairs that were performed by the Lunenburg foundry on the engines of the *I'm Alone*.

The day following my arrival at Lunenburg I tested the engines while the boat was tied at the dock. I had the assistance of a local engineer in doing this. I do not recall the name of this engineer but do remember that I gave him \$50.00 for his assistance in trying out these engines and for other assistance rendered in inspecting the boat. In addition to inspecting the engines as referred to I also inspected the hull, the sails, the riggings and general equipment of the vessel, following which I advised Hearn that I would purchase the boat.

Before my departure from New York, Hogan told me that he believed this vessel could be purchased for \$18,000. When I arrived in Lunenburg Hearn said that he believed that she might be purchased for this figure. In addition to the above I inquired at the dock yard as to the condition her bottom was found to be in when they pulled her out and finally concluded that if the boat could be purchased for \$18,000 that I would buy it.

Having thoroughly inspected the vessel as stated, I told Mr. Hearn that I was satisfied that she was in a seaworthy condition and for him to go in and get Iversen's best figures. After a consultation between Hearn and Iversen, Hearn then returned to me and stated that Iversen would sell her for \$18,000. In the purchase of this boat I paid \$18,500 to Mr. Hearn, \$500 of which was his commission for having arranged the deal. Mr. Hearn was very anxious that Iversen should not realize that I was paying the \$500 over and above the purchase price. This money was paid to George J. Hearn for Iversen in the presence of Mr. Iversen and Iversen's clerk. As soon as I paid this money to Hearn, Mr. Hearn asked Iversen to come over with him and go up to the bank. They both went to the bank and I remained in Iversen's office and around his dock. In about thirty minutes Iversen and Hearn returned and they told me that Iversen's price for the boat was \$18,000 Canadian money and that he would not accept the \$18,000 American money because at just this time the Canadian dollar was at a premium. Hearn advised me how much the premium would be

to convert this American money into Canadian money. At this time I am not certain how much the premium was but it was something between \$300 and \$400. I paid them the additional sum of this exchange.

I do not know as to the exact details of the preparation of the bill of sale for the boat. It is my understanding that a local attorney named Potter prepared a bill of sale by which Mr. Iversen transferred the title of this boat to George J. Hearn. Although this vessel had been purchased as I stated for Reitman, Hogan and myself, it was an accepted practice at that time to place the title to these boats in the name of Hearn in order that they could obtain a Canadian registry. In addition to acting as a cloak for the owners of the boat Hearn also is then able to direct their future operations and have the fact that the vessel is actually owned by American citizens difficult to establish. In this connection I state that I am an American citizen. The man that I have referred to as Dan Hogan and whose correct name I believe is Dan Halpin, is also an American citizen. While I do not know it to be a positive fact, I believe that Reitman also is an American citizen, and the three persons above named purchased, as recited above, the entire title to the boat *I'm Alone*.

On the same date I engaged a watchman recommended to me by Iversen and put him aboard the *I'm Alone* to be caretaker until the crew arrived. Iversen had already advised me that it would be convenient to leave the boat at his dock. I believe the same evening that I purchased the boat I went over to Halifax where I registered at the Halifax Hotel under my own name. I remained there a couple of days visiting. From Halifax I returned to New York, crossed through Moncton, St. John and Vanceboro, Maine. I came on to New York where I reported to Hogan that I had purchased the *I'm Alone* as stated above.

I remained in New York for only a short time, possibly two or three days, and proceeded on down to Houston and Galveston, Texas.

In the purchase of this boat Mr. George J. Hearn acted only as an agent and was paid a commission for his services. He did not purchase for himself any part whatever of the

ownership of the boat. It is my information that Hearn did not transfer the title to this boat to a company until after the sinking of the *I'm Alone*.

At the time I put in my \$5,000 to the purchase of the *I'm Alone*, the understanding between Reitman, Hogan and myself was that if I did not care to continue in the ownership of one-fourth interest in this boat they would take over my interest and pay me 100% profit. Up to the present time I have never transferred my quarter interest to anybody although I have been paid my share of the earnings of this boat, amounting to several thousand dollars. So far as I am aware neither Hogan nor Reitman, who were joint owners with me in this boat, transferred any ownership interest in that boat up to the date she was sunk. I have not in any manner assigned my interest in the ownership of this boat nor have I assigned my interest in any claim which may be filed for damages incurred by the sinking of this boat.

I was fully aware as to the service this vessel was to engage in but did not take any part in the selection of the crew that was put aboard her other than to suggest to Hearn that he should engage a captain who could well represent himself in case of any difficulty as the Coast Guard were pulling in vessels right and left at this time.

It was approximately two or three months later before I was in touch with this boat in the Gulf of Mexico and at different intervals before she was sunk I was in touch with her. I advised Captain Randell that he should never let the Coast Guard put a line on her, that he should let them sink her rather than let them put a line on her, but I did not direct the movements of this vessel. Captain Randell received his instructions as to his operations from either New York or Montreal and not from me.

During the months of December 1928, January and February 1929, I contacted and unloaded the schooner *I'm Alone* off Trinity Shoals, off the coast of Louisiana. The next contact I attempted to make was in March 1929. This effort was unsuccessful for the reason that the *I'm*



*Alone* was picked up by the Coast Guard and eventually sunk in the Gulf of Mexico.

In making contact with the *I'm Alone* off Trinity Shoals on those various dates I used the boats *Cherie*, the *City of Rome*, the *Laura Lee*, *Venus* and *Nicholas*. The first time I went aboard the *I'm Alone* in the Gulf I had a torn \$1.00 bill as an identification symbol, which I presented to Captain Randell. After that I did not need any identification. These cargoes were taken from the *I'm Alone* in the Gulf of Mexico and deposited at various points in the vicinity of Iberia and Vermilion Parishes. I was on board the *Cherie* when it was chased by the Coast Guard Cutter 231 and entered Southwest Pass near Marsh Island. I ran the *Cherie* on the shore at Marsh Island and set her on fire. Others who were on board the *Cherie* at that time were Pete Schaubhut, Asia Stein, Stirling Bemis, Frank Allen and Remick Sonier. I had a young Newfoundland dog which we carried through the marsh. Bemis threw away his suit case. Asia Stein and Pete Schaubhut will be able to corroborate this statement.

I have read the above statement before signing and the same is true and correct to the best of my knowledge and belief.

MARVIN J. CLARK

Subscribed and sworn to before me this 4th day of April, 1932.

H. S. CREIGHTON

*Supervising Customs Agent.*

WITNESSES:

EDSON J. SHAMHART

GARLAND H. WILLIAMS





Certified Copy of Passenger Records of the Boston &amp; Yarmouth Steamship Co., Ltd.

Form A. D. B.  
1-27-100**Boston & Yarmouth Steamship Co., Ltd.****S. S. YARMOUTH**Passenger List No. 115**BOSTON** to **Yarmouth****WEDNESDAY** SEP 26 1928 . 192\_\_

PAGE	NO	AGENT'S COLUMN	PURSER'S COLUMN	NO.	AMOUNT
1			Agent's Sales	45	177.5
2			Purser's Sales	64	177.5
3			Classified		
4			Room Board		
5			Net		
6					
Totals		✓	189.92	Total Sales	
Less					
in hand					
Net		✓	189.92	Total	189.92

Purser

Price	Name of Passenger	Number Stateroom Ticket	Agent's Column	Purser's Column	Room	Price	Name of Passenger	Number Stateroom Ticket	Agent's Column	Purser's Column
00	U1.25				o 111	U1.50				
	L1.50					L2.00				
	S				o 112	U1.50 City				
						L2.00				
01	U1.25 City				o 113	U1.50				
	L1.50					L2.00				
	S									
02	U1.75				114	U1.25 City				
	L2.25					L1.50				
	S					S				
03	U1.75 City				115	U1.25				

BOSTON, MASS., January 18, 1934.

I hereby certify that this is a photostatic re-production of passenger record of the SS *Yarmouth*, sailing from Boston to Yarmouth, N.S. on September 26, 1928, submitted to the Boston Police Department, this date by Supervising Customs Agent Owen P. McKenna, Boston, Mass.

THOS. F. GLEAVY,  
Captain, Bureau of Records, Boston Police Department.

BOSTON, MASS., January 19, 1934.

I hereby certify that the above record is a correct photostatic re-production of the official record taken from the passenger list of the sailing from Boston, Mass. to Yarmouth, N.S. on Sept. 26, 1928, specifically listing M. J. Clark as being a passenger of record who occupied stateroom no. 239.

A. J. McLAUGHLIN,  
Comptroller, Eastern S.S. Lines, Inc.

Subscribed to and sworn to before me this 19th day of January, 1934, at Boston, Mass.

[SEAL]

HERMAN A. HAM,  
Notary Public.

My commission expires July 2, 1937.



## Certified Copy of Passenger Records of the Boston &amp; Yarmouth Steamship Co., Ltd.—Continued

SEP 26 1928

## STATEROOMS

Room	Price	Name of Passenger	Number Stateroom Ticket	Agent's Column	Purser's Column	Room	Price	Name of Passenger	No. Sta T
233	U1.25 L1.50	<i>[Signature]</i>				232	U1.75 L2.25	<i>[Signature]</i>	
234	U1.25 City L1.50					253	U1.75 City L2.25		
235	U1.75 L2.25	<i>J. Connel</i>	34652	400		254	U1.25 L1.50	<i>[Signature]</i>	
	S					255	U1.75 City L2.25		
236	U1.25 City L1.50					256	U1.25 City L1.50		
237	U1.75 L2.25	<i>[Signature]</i>				257	U1.25 City L1.50	<i>[Signature]</i>	
	S					258	U1.75 L2.25		
238	U1.25 L1.50	<i>[Signature]</i>				259	U1.25 City L1.50		
239	U1.75 L2.25	<i>[Signature]</i>		X		260	U1.75 L2.25		
	S					261	U1.25 L1.50		
240	U1.75 City L2.25	<i>[Signature]</i>				262	U1.25 L1.50		
	S					263	U1.75 L2.25		
241	U1.75 L2.25	<i>[Signature]</i>							
	S								
242	U1.75 City L2.25								
	S								
243	U1.75 L2.25	<i>[Signature]</i>							
	S								

BOSTON, MASS., January 18, 1934.

I hereby certify that this is a photostatic re-production of passenger record of the SS *Yarmouth*, sailing from Boston to Yarmouth, N.S. on September 26, 1928, submitted to the Boston Police Department, this date by Supervising Customs Agent Owen P. McKenna, Boston, Mass.

THOS. F. GLEAVY,  
Captain, Bureau of Records, Boston Police Department.

BOSTON, MASS., January 19, 1934.

I hereby certify that the above record is a correct photostatic re-production of the official record taken from the passenger list of the sailing from Boston, Mass. to Yarmouth, N.S. on Sept. 26, 1928, specifically listing Mr. [Signature] as being a passenger in stateroom no. 239.

A. J. McLAUGHLIN,  
Comptroller, Eastern S.S. Lines, Inc.

Subscribed to and sworn to before me this 19th day of January, 1934, at Boston, Mass.

[SEAL]

HERMAN A. HAM,  
Notary Public.

My commission expires July 2, 1937.





## APPENDIX 6

### Affidavit of John B. Magnus, Dated April 20, 1934

IN THE MATTER OF THE ARBITRATION OF THE SCHOONER  
"I'M ALONE"

COMMONWEALTH OF MASSACHUSETTS }  
COUNTY OF SUFFOLK } ss

I, John B. Magnus, of Plymouth in the County of Plymouth, Commonwealth of Massachusetts, on oath do depose and say that I am an American citizen by naturalization, having been naturalized at Boston, Massachusetts, in July 1912 in the Federal Court; that on or about January 1923 I placed the order for building the Schooner *I'm Alone* with Smith & Rhuland of Lunenburg, Nova Scotia, and I used at that time the name of John Rogers of Boston; that the *I'm Alone* was built for me and completed about October 1923. There were no regular blue-print plans of the *I'm Alone*, but I personally gave instructions on the kind of a boat to be constructed; that my personal instructions were for a heavy construction of the stern to take care of the big power plant which was to be installed; that the stern was heavier, and full, and flared out so she would not drag with the big power. She was built along the line of the regular fishing schooner except for the stern which was heavier, as I have said, in order to take care of the big power—something after the style of the *Killarney*. She carried two masts, schooner rigged. That she was built for the purpose of rum running. Her power plant consisted of two 100-horse-power crude oil engines of the Fairbanks Morse construction which were purchased at St. Johns, New Brunswick. That the supervision of the detail in building the *I'm Alone* was done by Watson Wagner, an employee of mine in whose name I had the vessel registered at the beginning.<sup>1</sup>

<sup>1</sup> [Official Registry shows first registration of *I'm Alone* on October 12, 1923, in name of Watson Wagner.]

In August 1923 I organized at Lunenburg, Nova Scotia, under special legislation, a corporation at Lunenburg, Nova Scotia, called the I'm Alone Shipping Company, through my counsel W. P. Potter, K.C. The stockholders of said company were obtained for the purpose of having Canadian owners, but the property to be owned by said corporation was owned by me and the stockholders were dummies used to conform with the Canadian law. Some time after the formation of this Canadian corporation I had transferred to it my schooner the *I'm Alone*,<sup>1</sup> and from that time to the end of my ownership the I'm Alone Shipping Company owned and operated the schooner *I'm Alone*. There were taxes paid on the schooner *I'm Alone* to the town of Lunenburg, Nova Scotia, while I owned her.

Mr. Potter, K.C., informed me that the Canadian customs authorities were investigating the *I'm Alone* and that it was advisable to form a holding company, which was in due time formed under the laws of the Province of Quebec, called the Eastern Seaboard Steamship Agencies, Limited,<sup>2</sup> which, as I understand it, became a holding company for the stock of the I'm Alone Shipping Company and the Forwarders, Limited, which latter company was the one which owned my boat the *174*. In order to organize this corporation I went to Montreal and got the services of Mr. Jacobs, K.C., through the Great West Wine Company, who organized this corporation for me, and which, like the corporation known as the I'm Alone Shipping Company, was owned by me although the stockholders were dummy stockholders to comply with Canadian law.

The Great West Wine Company introduced me to one George J. Hearn who would be an employee of mine and attend to my business in Montreal. From that time on Mr. George J. Hearn attended to the corporation and other business of the Eastern Seaboard Steamship Agencies, Limited, for me; Mr. George J. Hearn worked for me on a

<sup>1</sup> [Official Register shows registration, October 31, 1924, in name of I'm Alone Shipping Co., Ltd.]

<sup>2</sup> [Official Register shows registration, September 28, 1928, in name of Eastern Seaboard Steamship Agencies, Ltd., and bill of sale of same date from Eugene Creaser Shipping Co.]

salary basis. Mr. John James Coolican of Montreal was the first president of the Eastern Seaboard Steamship Agencies, Limited, but on account of complaints from other legitimate companies with which he was associated he was forced to resign as president of the Eastern Seaboard Steamship Agencies, Limited. I do not know whether anyone was appointed to take his place, but the business of the company has since that time been managed by George J. Hearn to my knowledge up to April 1928 when he received instructions from me to dissolve the Eastern Seaboard Steamship Agencies, Limited, and also the I'm Alone Shipping Company. In order to do this I turned over to Mr. Hearn my certificates of stock and understood that he was to attend to the dissolution of these companies. At the same time I sent up to Hearn my stock in the Forwarders, Limited, with instructions to have that company also dissolved.

During the time these boats were in the control of these corporations I directed their activities up to March 16, 1928. At that time I made arrangements to sell, and did sell, the Schooner *I'm Alone* for ten thousand dollars (\$10,000) to Captain Christian C. Iversen<sup>1</sup> through my counsel, Mr. Potter, of Lunenburg, Nova Scotia; and I am attaching a copy of the expenses charged to me in this transaction [see exhibits A, B, C, D, and E]. And I am also attaching a copy of an account which was given by George J. Hearn to an agent of the Great West Wine Company who delivered it to me [see exhibits F, G, and H], which account deals with the office expenses of the Eastern Seaboard Steamship Agencies, Limited, of Montreal, and the credit on account of the sale of the *I'm Alone*. During the time that I was negotiating the sale of the Schooner *I'm Alone* I received an offer from Daniel Hogan, a well-known resident of New York. I understood from reports to me that Mr. Daniel Hogan later purchased the Schooner *I'm Alone* from Captain Christian C. Iversen to whom I sold the boat. Mr. Hogan called on me in person at Boston in regard to the purchase of the schooner

<sup>1</sup> [Official Register shows registration, April 28, 1928, in name of Christian Iversen, under bill of sale dated March 30, 1928, from I'm Alone Shipping Co., Ltd.]

*I'm Alone*, and after going to Yarmouth, Nova Scotia, and looking at the boat called on me on his way back from Nova Scotia. From my conversation with Mr. Hogan I learned that he intended to use the Schooner *I'm Alone* for running rum in the Gulf of Mexico from British Honduras.

The shares representing the ownership of the Schooner *I'm Alone* and also those representing the ownership of the motor vessel 174 were indorsed by the persons to whom they were issued in blank and held by me until April 1928, when I sent them to George J. Hearn with instructions to dissolve the *I'm Alone* Shipping Company and Forwarders, Limited.

JOHN B. MAGNUS

Subscribed and sworn to before me this 20th day of April 1934.

HUGO S. BAGNULO

*Notary Public.*

(SEAL)

---

### EXHIBIT A

W. P. POTTER,  
LUNENBURG, N.S.

*April 10th, 1928.*

DEAR MR. HEARN:

Enclosed herewith please find a statement of moneys paid by C. Iversen on account of purchase money Schooner *I'm Alone* and how the same was disbursed. I have paid one item out since you left here, namely \$55.12 to the lawyers in Yarmouth for their services in connection with the search for the wireless set. They had, as I told you, employed a constable to make investigations at Yarmouth. The statement shows a balance in my hands of \$444.88.

You have the statement showing how the amounts of the settlement with Cook and Olsen were arrived at. I have none of these papers.

I am also enclosing herewith your copy of the "Giant King" charter party between the Eastern Seaboard Steamship Agencies, Limited, and C. Iversen together with my account.

The statement with reference to the fines will follow later.

Yours very truly,

W. P. POTTER

George J. Hearn, Esq.,  
c/o Eastern Seaboard Steamship Agencies Ltd.,  
Coristine Building,  
Montreal.

## EXHIBIT B

*Cash Received:*

March 16th	C. Iversen	\$1000. 00
23rd	"	3660. 00
30th	"	5340. 00

---

 \$10000. 00
*Cash Paid Out:*

March 16th	Preventative Officer	\$400. 00
	Telegrams	4. 25
20th	Cash to trace wireless set	25. 00
	Telegrams	. 85
23rd	Police for release of Cook	305. 00
	Law's account	480. 00
	S. A. Crowell and Co	2. 95
	Shipping Master	. 50
	Immigration deposit for Levas-	
	seur	50. 00

30th Crew Wages \$4880. 30

Less advanced by

Hardy 120. 00

---

 4760. 30

Passages for crew 135. 00

Towage to Lunenburg 112. 50

Insurance 45. 00

Bank Exchange 4. 10

31st Olsen 1287. 00

Taxes Lunenburg 291. 22

Potter Commission 250. 00

 Search Warrent *re* wireless 55. 12

Hearn Cheque 1346. 33

---

 9555. 12

---

 W. P. Potter Balance on Hand \$444. 88

## EXHIBIT C

## CREW WAGES

D. Cook-Captain-Oct. 15th to March 30th-\$300.00 per mo. and bonus	\$1912. 00
E. Welch Chief Engineer Dec. 16 to Mar. 30-\$200.00 per mo.	700. 00
W. Conrad Second Engineer Dec. 10 to Mar. 30-\$90.00 per mo.	330. 00



W. Knock-Dec. 10 to Mar. 30-\$70.00 per mo.....	256. 75
K. Godley-Dec. 8 to Mar. 30-\$125.00 per mo.....	470. 85
P. Oxner-Dec. 8 to Mar. 30-\$70.00 per mo.....	263. 70
W. Leary-Dec. 8 to Mar. 30-\$70.00 per mo.....	263. 70
P. Murphy-Dec. 12 to Mar. 30-\$70.00 per mo.....	254. 30
E. Levasseur, in full.....	429. 00

---

\$4880. 30

## EXHIBIT D

### STATEMENT OF MONEYS DISBURSED AT YARMOUTH

1928

March 23rd

To cash paid T. U. Killam, Chief of Police for release of Cook on Capias issued by Landry et al.....	\$305. 00
" Cash paid Donald Cook, on account of wages..	1200. 00
" " " Ewart Welch, " " " " ---	300. 00
" " " Keneth Godley . " " " " ---	200. 00
" " " Winifred Knock " " " " ---	125. 00
" " " William Conrad " " " " ---	150. 00
" " " Peter Murphy " " " " ---	125. 00
" " " Paul Oxner " " " " ---	125. 00
" " " William Leary " " " " ---	125. 00
" " " E. Levasseur (for Law's account).....	50. 00
" " " William Law & Son.....	430. 00
" " " E. Levasseur, in full of wages.....	429. 00
" " " William Law & Son (account of S. A. Crowell & Co.).....	2. 95
" " " Shipping Master.....	. 50
" " " Immigration Office (deposit <i>re</i> E. Levas- seur).....	50. 00
Total amount paid out.....	\$3617. 45

## EXHIBIT E

LUNENBURG, N.S.

March 31st, 1928.

1928

March 16th By Cash received from C. Iversen on account of purchase price.....	\$1000. 00
To cash forwarded Chief Preven- tive Officer McCormack, pend- ing decision of Minister.....	400. 00

1928

March 16	To Western Union Charges on same-----	4. 25	
20th	“ Cash forwarded to Captain to trace wireless set-----	25. 00	
	“ Western Union charges on same-----	. 85	
23rd	By cash received from C. Iversen-----	\$310. 3350.	3660. 00
	To cash disbursed at Yarmouth, payment of wages, Law's accounts, etc-----	3617. 45	
30th	By cash received from C. Iversen-----		1450. 00
	To cash paid crew in full of wages as per statement-----	1369. 30	
	By cash received from C. Iversen-----		747. 00
	To cash paid Donald Cook (in full settlement)-----	747. 00	
	By cash received from C. Iversen, balance purchase price less following items:		
	1/2 towage bill, Yarmouth to Lunbrg---	112. 50	
	Insurance premium on ship-----	45. 00	
	Exchange on money forwarded to Yarmouth -----	4. 10	
		161. 60	[2981. 40]
31st	To cash paid B. Emil Oldsen----	1287. 00	
	“ cash paid Town of Lunenburg, taxes-----	291. 22	
	“ cash paid W. P. Potter, commission on sale-----	250. 00	
	By balance-----	1846. 33	
		<u>\$9838. 40</u>	<u>\$9838. 40</u>
	Balance-----		\$1846. 33
	To cash paid George J. Hearn for Eastern Seaboard Steamship Agencies Ltd-----	1346. 33	

March 31st To	Cash paid Chipman & Sander- son, Yarmouth in full of account for services <i>re</i> search warrant for wireless outfit, etc-----	55. 12
April 10th	Balance on hand-----	444. 88.
		<hr/>
		\$1846. 33 \$1846. 33

NOTE: There will still be payable to the Town of Lunenburg for taxes as assessed on January 1st, due on June 1st, and according to the custom of this port all such taxes are paid by the person selling the ship.

### EXHIBIT F

Cable Address:  
"ESSALMO"

Phone Main 0363

EASTERN SEABOARD STEAMSHIP AGENCIES, LIMITED  
STEAMSHIP AGENTS AND BROKERS  
CORISTINE BUILDING  
MONTREAL

		Vessels, Tugboats, Steamers, Power Boats, Yachts Scows and Barges Bought and Sold
As per statement on Maureilendole-----		6947. 92
Less amounts not then paid and since paid-----		862. 26
		<hr/>
		6085. 66
Amounts since paid Telephone (4 months)-----	140. 55	
do-----	72. 75	
Telegraph (4 do )-----	181. 77	
Rent (4 do )-----	172. 68	
Taxes-----	127. 11	
City taxes-----	43. 87	
Insurance (Maur)-----	180. 55	
Balance purchase-----	203. 82	
Final settlement		
Captain-----	110. 00	
Life belts-----	24. 50	
Supplies-----	13. 00	
Gasolene-----	644. 31	
		<hr/>
		1914. 91 1914. 91
		<hr/>
		8000. 57

Monies received as per statement	6050. 00	
do do since John	300. 00	
Alf	644.	
Check	1346.	
	<hr/>	
	8340. 00	340. 00
		<hr/>
		8340. 00

This shows a credit to John but I have not deducted any salary since November and it only takes care of the office up to the end of March neither does it include any expenses or monies in connection with the *I'm Alone* settlement with the exception of the \$1346.00 received and for which I have given John credit.

## EXHIBIT G

### STATEMENT

#### Expenditure

Telegram, W. Law & Co	\$ . 60
Cash, Wireless Harrison	50. 00
Telephone, W. Law & Co	1. 05
Meals and Lodging	14. 25
Ferry Boat	2. 50
Telegram, W. Law & Co	. 45
Boat hire to locate <i>I'm Alone</i>	75. 00
Lunenburg Foundry Co., Ltd.	19. 75
Hotel Liverpool, Olsen and Cook	61. 50
Car hire to Cape Sable	30. 00
Taxi on Cape Sable	3. 00
Car hire back to Liverpool	30. 00
Cash, French Wireless	22. 50
Hotel, " "	11. 00
Shipping Master, Liverpool	3. 00
Port Charges, " "	1. 00
Articles for Crew	5. 40
Telegram to Heisler, St. Pierre	. 90
Telegrams to John (2)	1. 72
Pilot, Vogler's Cove	12. 00
Advance, Mate Berringer	260. 00
" 1st Engineer	250. 00
" 2nd Engineer	200. 00
" Essen Selig	200. 00

*Expenditure—Continued*

Advance, Fralic.....	179. 46
“ Tancook.....	200. 00
“ Wireless, Cameron.....	100. 00
M. A. Nickerson.....	5. 30
Shipping Master, Liverpool.....	3. 80
Telephone Lunenburg-Liverpool.....	1. 20
Telegram to John.....	. 67
Ticket, Yarmouth to Lunenburg.....	6. 05
Radio, <i>I'm Alone</i> .....	28. 85
Ticket, Halifax-Lunenburg.....	3. 10
Sailmaker.....	4. 00
Ticket Lunenburg-Boston.....	20. 00
State Room.....	5. 00
Meals on Boat.....	6. 00
Ticket Lunenburg-Yarmouth.....	6. 10
“ Yarmouth-Halifax.....	9. 15
Tel. Account, Apr. to Nov.....	17. 00
Total Expenditure.....	\$1851. 30

## EXHIBIT H

## MEMORANDUM OF CASH PAID CREW AT LUNENBURG

1928

March 30th EWART WELCH, *Chief Engineer*.

1927

Dec. 16th, to March 30th/28

3 months and 15 days at

\$200..... 700. 00

Less:

Cash advanced at Yar-  
mouth..... 300. 00

Cash advanced by Captain.. 5. 00 305. 00 395. 00

WILLIAM CONRAD, *Second  
Engineer*

Dec. 1st/27 to March 30/28

3 months and 20 days at

\$90..... 330. 00

Less:

Cash advanced at Yar-  
mouth..... \$150. 00

Cash advanced by Captain.. 5. 00 155. 00 175. 00



1928

March 30th WINIFRED KNOCK,

Dec. 1/27 to March 30/28

3 months and 20 days at

\$70----- 256.75

Less:

Cash advanced at Yar-  
mouth----- 125.00

Cash advanced by Captain- 5.00 130.00 126.75

KENNETH GODLEY,

Dec. 8/27 to March 30/28

3 months and 23 days at

\$125----- 470.91

Passage money to St. Pierre----- 35.00

Less: 505.91

Cash advanced at Yar-  
mouth----- 200.00

Cash advanced by Captain- 5.00 205.00 300.85

PAUL OXNER,

Dec. 8/27 to March 30/28

3 months and 23 days at

\$70----- 263.70

Passage money to St. Pierre----- 35.00

Less: 298.70

Cash advanced at Yar-  
mouth----- 125.00

Cash advanced by Captain- 5.00 130.00 168.70

PETER MURPHY,

Dec. 8/27 to March 30/28

3 months and 19 days at

\$70----- 254.27

Passage money----- 30.00

Less: 284.27

Cash advanced at Yar-  
mouth----- 125.00

Cash paid by Captain----- 5.00

Cash paid by Louis Hardy  
on joining----- 35.00Cash paid by Louis Hardy  
to wife----- 85.00 250.00 34.30

March 30th WILLIAM LEARY.

Dec. 8/27 to March 30/28

3 months and 23 days at

\$70----- 263. 70

Passage money----- 35. 00

Less: 298. 70

Cash advanced at Yar-  
mouth----- 125. 00

Cash advanced by Captain- 5. 00 130. 00 168. 70

\$1369. 30

## APPENDIX 7

**Affidavit of Charles M. Barnett, Dated March 29, 1934**

UNITED STATES OF AMERICA }  
CITY OF NEW YORK } ss  
STATE OF NEW YORK }

IN THE MATTER OF THE SINKING IN THE GULF OF MEXICO  
ON MARCH 22, 1929, OF THE AUXILIARY SCHOONER "I'M  
ALONE" OF THE PORT OF LUNENBURG, NOVA SCOTIA,  
OFFICIAL No. 150,960

I, CHARLES M. BARNETT, of 75 West Street, New York  
City, N.Y., do solemnly declare and state as follows:

1. I am President of the Clinchfield New York Corpora-  
tion of 75 West Street, New York City, New York, and have  
had experience in shipping of over thirty years, both here  
and abroad, including in that experience contracting for the  
construction of vessels, operation, management, chartering,  
purchase and sale, and valuation of vessel tonnage in general  
average, salvage and Court cases generally.

I have had broad experience in the purchase and sale  
of vessel tonnage, through our exclusive representation in  
the United States and Canada of the firm of C. W. Kellock  
& Co. Ltd. of London and Liverpool, which firm are licensed  
auctioneers and valuers, brokers to the Marshal of the Ad-  
miralty and valuers to the Admiralty; through our repre-  
sentation of the Norwegian firm of Conrad Boe, Ltd. A/S,  
foremost purchase and sale brokers in Norway and creators  
of the Shipping Cable Code known as the "Boe Code"; the  
French firm of Fernand Barry-Marcel Rogliano, Sworn Ship  
Brokers and Ship Agents at Marseilles; the firm of Jacq.  
Pierot, Jr. & Sons, at Rotterdam, Sworn Brokers, Valuers  
and Auctioneers, Ship Mortgagees, etc.; the firm of Y. Sato  
& Co., Ship Brokers and Ship Valuers at Kobe, Japan; and  
other prominent firms.

In 1928 I was appointed a special assistant to the United States Attorney General to assist in connection with the Ship Claims pending before the War Claims Arbiter under the "War Claims Act of 1928" involving the valuation of ninety four merchant vessels; and in 1930 with the unanimous consent of Counsel for the United States and Germany I was appointed sole technical shipping expert to the War Claims Arbiter to assist in the adjudication of the Claims.

I acted as a shipping expert for Counsel for the Canadian Government in certain claims under "The Reparations Payment Act, 1929" and also made appraisals for certain Claimants thereunder.

I have made valuations on account of

The Treasury Department of the United States  
 The Shipping Board Merchant Fleet Corporation  
 The Department of Justice  
 Standard Oil Co. of New Jersey  
 Standard Oil Co. of California  
 Cities Service Oil Co.  
 Imperial Oil Co. of Canada  
 Atlantic Refining Co.  
 Beacon Oil Co.  
 Union Oil Co.  
 Tidewater Oil Co.  
 United States Steel Corporation  
 Munson Steamship Line  
 Merritt-Chapman & Scott Corporation  
 American-Hawaiian Steamship Company  
 Baltimore Steam Packet Co.  
 Bull Steamship Lines  
 Consolidation Coal Co. Inc.  
 Cuba Distilling Co.  
 Oriental Navigation Co.  
 Dawnic Steamship Corporation  
 Dimon Steamship Co.  
 Dunbar Molasses Co.  
 Etc. etc.

2. From the "List of Shipping" issued by the Department of Marine, being a list of vessels on the Registry Books of the Dominion of Canada, and from the entry of the vessel in American Bureau of Shipping, and from an examination of the records of the Registrar General of Shipping, and

from private sources of information on record in my office, I am familiar with and fully informed as to the particulars of the Auxiliary Schooner *I'm Alone*; and that she was built in and launched from the shipbuilding yards of the firm of Smith & Rhuland, Shipbuilders, carrying on business at Lunenburg, Nova Scotia, in October 1923.

3. From my experience and office records, I am satisfied:

A. That the cost of building the hull of the *I'm Alone*, supplying and fitting the spars, including booms and gaffs, blocks and iron work on the same, plus the cost of the sails, standing rigging, running rigging and other ropes and two anchors and chains;

B. That the cost of the motive power plant and installation of the *I'm Alone*, consisting of two 100 B.H.P. crude oil Fairbanks-Morse engines, equipment and accessories; and the cost of an electric lighting plant and bilge pumps;

C. That the cost of supplying and installing in the *I'm Alone* of a heating plant, plumbing, cooking stoves, fuel and water tanks, engine room telegraph and other engine room accessories, and

D. That the cost of installing radio equipment on the *I'm Alone*

did not exceed in round figures the sum of Fifty thousand (50,000) dollars.

In this connection it should be noted:

A. That although Mr. George A. Rhuland and Mr. Edson Sollows, who made the statutory declarations printed as Appendix A and Appendix B pages 12 and 13 of the Canadian statement, were in a position to give the *actual* prices paid for the hull and equipment and the actual price paid for the engines and equipment and for the lighting plant and pumps, they did not do so.

B. That Mr. George A. Rhuland and Mr. Edson Sollows did not give the name and address of the person or persons for whom they constructed the vessel, but it is set out in the record that the "Auxiliary Schooner *I'm Alone* was originally built at the order of and paid for by a citizen of the United States" (Answer of the Government of the United



States; Arbitration Series No. 2 (3) page one) [see also appendix 6].

C. That Canadian dollars in 1923 were one to three percent below par; in October 1923 the Canadian dollar in New York stood at .9855 (Statistical Abstract of the United States, 1924 page 276).

4. Between the years 1923 and 1929 there were no important changes in shipbuilding costs.

The reproduction cost, new, in March 1929 of the *I'm Alone* would have been approximately the same as the original building cost of the vessel as completed in October 1923.

5. The claim, as presented, is made on the basis of reproduction, new, as of March 22, 1929, for a vessel which at date of sinking was five years and five months old. No deduction or allowance is made in the claim for depreciation. The basis of claim, as presented, is in my opinion untenable.

The claim in my opinion should have been made:

A. On the basis of market value, if a market value could be established by a check and comparison with prices actually received on sales of comparable vessels made in the market around the pertinent date.

B. And failing establishment of such a market value, on the basis of reproduction new as of March 1929, less depreciation and obsolescence, giving proper weight to the exigencies of the service in which engaged.

In this connection it should be noted:

A. That according to affidavits in the possession of the United States, Captain Iversen sold the *I'm Alone* to the Eugene Creaser Shipping Company in September 1928 for the sum of \$18,000. complete, including the heating plant costing, according to statutory declaration of William T. Powers, Appendix C, attached to the Canadian claim for compensation, \$2,033.50, as supplied in 1923, and also including the radio equipment costing, according to statutory declaration of Albert Underwood, Appendix D, attached to the Canadian claim for compensation, \$3,935., as supplied in 1925;

B. That the Canadian statement is entirely lacking in any evidence as to the prices at which vessels of the size

and type of the *I'm Alone* engaged in rum-running traffic were sold in Lunenburg or in other Canadian ports in the Spring of 1929;

C. That it is difficult for outsiders to obtain reliable information as to such prices. There were inter-ownership transfers or "ring" to "ring" sales as such terms were used in shipping circles, of rum-running vessels, but sales prices were not made public, and values or considerations in Bills of Sale, evidencing such sales or transfers if made available may not have reflected actual market prices or values. No sales of rum-running vessels were reported in *Fairplay*, for example, or in other shipping publications, such as are customarily reported for sales of commercial vessels in the ordinary course of business.

6. As to vessels engaged in the rum-running traffic:

Vessels engaged in the so-called rum-running trade are in a class by themselves.

Vessels of the *I'm Alone* build and type have little or no market value as commercial vessels. They carry little cargo; they are expensive to operate and to maintain; they are not equipped or entirely suitable as equipped, for fishing vessels, although original cost may be as great or greater.

Vessels of the *I'm Alone* type may have a theoretical value to Owner distinct from a market value. But the value to her Owner in rum-running traffic, based on earning value, is undeterminable by any market value measure. The earning value and useful life to Owner of any vessel in the rum-running trade is purely problematical, entirely dependent upon luck or circumstances: duration of each voyage; successful evasion of capture; maintenance cost; weather conditions permitting use of sails, etc. For example, the vessel may be seized within a year or less of date of build, and her value to Owner lessened or lost.

Vessels engaged in the rum-running trade have no proper regular maintenance and burn out engines much more rapidly than vessels engaged in legitimate commercial trades.

In confirmation of these views, attention may be invited to the following statements:

A. To the note of the Canadian Minister to the Secretary of State dated April 9, 1929, printed in the diplomatic

correspondence Arbitration Series No. 2 (1) page eight where it is recited:

The Captain previously testified that he was at anchor when observed by the *Wolcott* in order to examine his port engine, in which a bottom-end cylinder bearing had burned out.

The condition in which the shape of the engines were we could not do better than 7½ knots.\* . . . It was quite a good while since we were docked and the bottom was pretty dirty.

B. To the History of the Operations of the *I'm Alone* from April 30, 1924 to January 8, 1927 Arbitration Series No. 2(3) page thirteen, showing the long periods vessel was continuously at sea without opportunities for docking and proper overhauling.

Diesel engine manufacturers estimate the useful life of engines of the type of *I'm Alone* at from 13 to a maximum of 20 years when used in ordinary service. Half of that life is all that could reasonably be expected from a vessel engaged in rum-running traffic on account of lack of proper maintenance and because of strain when vessel operated in manner described in Arbitration Series No. 2 (1) page eight:

The testimony of the captain concerning the vessel's speed given before His Majesty's consul general in New Orleans, is as follows:

Q. What was the speed of your vessel just before you anchored?

A. Positively not more than 6¼ knots . . .

Q. What is the longest run in 24 hours that the boat has ever done with engines running and sails set?

A. 231 knots, with a moderate gale on the quarter, and then under conditions in which the vessel had to be in ballast. We did less with cargo . . .

(After the captain had described the beginning of the pursuit—)

Q. Could you give me any estimate of your speed?

A. At that moment at the very outside we were making about 6¼ knots, perhaps, it would be just about our best speed, as *I knew that if I ran my port engine on full speed opened out that the old trouble would probably leave us in jeopardy.*

7. The value-depreciation rate used by appraisers in valuing ordinary types of auxiliary wooden vessels on a comparable market value for age is 5 percent on yearly

---

\* The Canadian Government Official Register shows vessel's speed as 10 knots, which demonstrates clearly the factor of obsolescence.

reducing balances. In the case of vessels engaged in the rum-running traffic, as such vessels do not have the same useful life as ordinary type of wooden vessels engaged in ordinary commercial trades, I give them a useful life of ten years only, and figure depreciation accordingly.

The value-depreciation rate used by appraisers in valuing ordinary type vessels on a reproduction new—less depreciation for age—basis is also 5 percent on yearly reducing balances. This 5 percent value-depreciation rate, it should be noted, has nothing to do with the physical life of the vessel. The value-depreciation rate has been developed and confirmed by me through many years of experience, predicated on the theory that market value, as determined by a comparison with actual commercial market sales (not Marshal or forced sales), when such market sales are available, is the proper measure of value; and that in the absence of such market value, based on market sales, being determinable, one is forced to use reproduction cost, new, less depreciation; depreciation being calculated on value-depreciation as here stated. Experience has demonstrated the correctness of the use of 5 percent on yearly reducing balances in frequent cases where it has been possible to compare and check reproduction new, less 5 percent on reducing balances, with actual market values as determined from actual market sales. I may say that this 5 percent rate of depreciation so computed was approved and adopted in the settlement of the United States—Germany Ship cases; also in the Allies—German reparation cases, and in other international ship settlements.

8. If the *I'm Alone* had entered an American port and been seized and later valued as seized rum-runners have always been appraised, she would have been valued on a like basis, adjusted for relative size, as were the following vessels:

*Audrey B* at \$6,250; built in 1928, 109 gross tons, dimensions—109.5' x 20.6' x 8.4'; two 6 cylinder Fairbanks-Morse engines, 180 H.P.

*Josephine K* at \$4,250; built in 1926, 92 gross tons, dimensions—91.9' x 22.2' x 9.2'; two Fairbanks-Morse engines, 180 H.P.



*Whichone* at \$5,200; built in 1929, 99 gross tons, dimensions—97' x 20' x 10'; two Fairbanks-Morse engines, 100 H.P.

*Algie* at \$4,000; built in 1929; 151 gross tons, dimensions—105.7' x 19.8' x 11.2'; two Winton diesel engines, 275 H.P.

9. The equivalent average value for the *I'm Alone* on this like basis, considering only size as measured by gross tons, would have been Eight thousand five hundred and forty two (8,542.) dollars.

Compared with—

<i>Audrey B</i> value would have been-----	\$10, 317.
<i>Josephine K</i> -----	\$8, 326.
<i>Whichone</i> -----	\$9, 593.
<i>Algie</i> -----	\$5, 932.

10. The equivalent average value for the *I'm Alone* on this like basis, considering size as measured by gross tons and adjusting for difference in age, would have been Four thousand two hundred and ninety nine (4,299.) dollars.

Compared with—

<i>Audrey B</i> value would have been-----	\$5, 158.
<i>Josephine K</i> -----	\$5, 828.
<i>Whichone</i> -----	\$3, 837.
<i>Algie</i> -----	\$2, 373.

11. As a measure of market values of vessels equivalent to *I'm Alone*, since their use\* has been curtailed by the end of Prohibition in the United States and their usefulness to previous operators perhaps, therefore, permanently eliminated, I may mention that I have had for sale for sometime the following vessels, at the asking prices named, which, of course, are higher than the Owners would accept on firm offers, and

---

\* One of my Canadian correspondents wrote me recently:

At the present time there are many of these crafts for sale at the many ports of this province (Nova Scotia). Some ports have from ten to twenty of these crafts tied up for an indefinite time as business with them has taken a bad slump. The enclosed list will show the prices that rule in this line, though it looks as if they would dispose of them at any price.



my Company has been unable to find buyers for the vessels which is fairly good proof that no market exists now:

<i>Ashtuaia</i> -----	blt. 1929	106' x 20' x 8' 11 k.	\$15,000.
<i>Shulamite</i> -----	1930	115' x 23' x 8' 13 k.	\$25,000.
<i>Marvita</i> -----	1930	115' x 23' x 8' 13 k.	\$25,000.
<i>Standard Coaster</i> ..	1927	130' x 22' x 9' 13 k.	\$25,000.

These vessels are comparable with *I'm Alone*, except for the installation of masts and sails. So far as the engines in the vessels named are concerned, they are each fitted with twin-screw diesel motors, built by Fairbanks-Morse, of a more modern type than the *I'm Alone* engines and superior to them.

12. Considering all the factors herein recited:

Assuming that the September 1928 sale at \$18,000 represented market value of *I'm Alone*, and that it is the closest market sale to the pertinent date with which we are here concerned, March 1929;

Stating that \$50,000 is the reproduction cost new of *I'm Alone* as of March 1929 and that it is subject to reduction for depreciation and obsolescence for age; and

Recognizing, specially, that weight should be given to the exigencies of the service in which the vessel was engaged, and to its physical condition at the time of sinking;

I am of the opinion that the fair value to the owner of the *I'm Alone* as of March 22, 1929, is Twenty Thousand (20,000.) dollars and not Fifty one thousand nine hundred and sixty eight (51,968.) dollars as claimed.

CHARLES M. BARNETT

Sworn to and subscribed  
before me this 29th day  
of March, 1934 at  
New York, N.Y.

[SEAL]

WILLIAM MAERCKER

Notary Public, Kings Co. No. 742

Cert. filed in N.Y.Co. No. 913 Reg. No. 5M559

Commission expires March 30, 1935

## APPENDIX 8

Affidavit of Captain Neil Hall, Dated April 14, 1934

DOMINION OF CANADA,  
PROVINCE OF NOVA SCOTIA,  
CITY AND COUNTY OF HALIFAX, } ss  
CONSULATE GENERAL OF THE  
UNITED STATES OF AMERICA. }

Before me, George E. Chamberlin, Consul General of the United States of America at Halifax, Nova Scotia, Canada, duly commissioned and qualified, personally came Captain Neil Hall of lawful age, to me personally known, who being first duly sworn deposes and says:

I am a Canadian citizen holding the appointment as Port Warden at Halifax, Nova Scotia, with offices at Pickford and Black's Wharf this city. I have held the post of Port Warden for the past twenty-five years, Surveyor for the American Bureau of Shipping for the same period, Surveyor for the United States Salvage Association for the past five years, and was Surveyor for the British Corporation for approximately twenty-five years, my service in that capacity having ceased about one year ago.

According to the records the Auxiliary Schooner *I'm Alone* was built in the year 1923 and at the time of her loss would have been six years old.

I have investigated the cost of building a schooner of about the same class and build in the year 1923, and also the cost of two 100 H. P. Fairbanks-Morse engines installed on board and in my opinion, based on my own personal knowledge and also upon figures supplied to me by ship-builders in Lunenburg, Nova Scotia, where the *I'm Alone* was

built, as well as a number of the same class vessels, the following is a fair and just value:

Cost of hull, spars and sails in	
1923-----	\$20, 500. 00
Less depreciation at 6½ percent	
per year-----	7, 995. 00
<hr/>	
Value of vessel in 1929-----	\$12, 505. 00
Cost of two 100 H.P. Oil Engines	
installed in 1923-----	\$20, 000. 00
Less depreciation 6 years at 10	
percent-----	12, 000. 00
<hr/>	
Value of engines in 1929-----	8, 000. 00
<hr/>	
Total value of vessel at time of loss in	
1929-----	\$20, 505. 00
<hr/>	

I have as Port Warden, and other capacities in which I have served as before stated, in the last twenty-five years valued a large number of vessels for general average and insurance purposes and my values have seldom been questioned. If the schooner *I'm Alone* had been placed on the market under forced sale in 1929 she would not have brought \$15,000.00.

NEIL HALL

Subscribed and sworn to before me this fourteenth day of April, Nineteen Hundred and Thirty-Four.

G. E. CHAMBERLIN

*Consul General of the United States of America*

[Seal of Consulate General]

## APPENDIX 9

**Affidavit of John I. Snow, Dated May 21, 1934**

UNITED STATES OF AMERICA  
CITY OF ROCKLAND  
STATE OF MAINE

IN THE MATTER OF THE SINKING IN THE GULF OF MEXICO ON  
MARCH 22, 1929, OF THE AUXILIARY SCHOONER "I'M  
ALONE" OF THE PORT OF LUNENBURG, NOVA SCOTIA,  
OFFICIAL No. 150,960.

I, JOHN I. SNOW, of 63 Masonic Street, Rockland, Maine,  
do solemnly declare and state as follows:

1. My father was the principal owner in a shipbuilding, marine railway, and repair yard. I was born and reared within one-eighth of a mile from that yard. During my early teens and school vacations, I was kept at work there, pretty much. At about the age of sixteen, I skipped school, and joined a 'bark' in Boston, making a voyage to Bridgewater, N.S., Cienfuegos, Cuba, to Philadelphia. Then, I came home and worked about two years in the shipyard as blacksmith's helper. Next, I shipped second mate on a 'brig' sailing from Rockland to Red Beach, Baltimore, to Key West. I was given the mate's berth in Key West, but left the 'brig' in Mobile, coming directly home to take charge, as master, of the schooner *Jenny Greenbank*, 85 tons. For about two years, I ran her in the lime trade, between Rockland and New York, and the Chesapeake. Then I took charge of the tern Schooner *John I. Snow*, 186 tons, generally running out of New York in the Haytian trade, also the Windward Islands, Caribbean, and other West Indian ports, for a period of about four years. I then took charge of tern Schooner *Methebesec*, 318 tons, and ran her for about four years in the off-shore trade, from Cape Breton

to the Guianas, including Atlantic, Gulf, Mexican, Caribbean, and West Indian ports.

Since 1907, I have been President and General Manager of the Snow Marine Co., of Rockland, Maine, engaged in salvage, wrecking, general marine construction, lighterage, and towing; also partner, and afterward director in the I. L. Snow Co., shipbuilding and repair yard at Rockland, Maine, acting as Treasurer, Vice President, and President, respectively. I have personally superintended the salvaging of many vessels, both steam and sail, some of which are the Bull Line Steamship *Carolyn*; Steamer *Gov. Bodwell*; Steamer *Sankaty*; the fishing Schooner *Elizabeth Howard*; and other sailing vessels too numerous to mention here. I have undertaken salvage for the London Salvage Association; U.S. Salvage Association; Boston Insurance Company; Providence-Washington Insurance Co.; and other insurance companies.

2. I am familiar with the type and construction of vessels that have been built, and sailed out of Lunenburg, N.S., and vicinity; Cape Ann; Provincetown; and Maine ports, for more than thirty-five years. I have, from contact with captains and crews of the older style bank fishing vessels, which were without power, using sails only, understood that after these bank fishing vessels had been used in that service eight years, that they were looked upon with disfavor for further use on the Grand Banks. In the modern style of sailing vessel, built for the fishing industry, owners and builders have, especially in the larger sized vessels for that trade, sacrificed strength of hull, under-deck capacity, and longevity; for speed, quick maneuvering, and fashion. This was brought about by following along the yacht designs, as they developed the short under-water body, fineness of hull, and increased over-hang at bow and stern. Further, in later years, the installation of the larger diesel engines for auxiliary power, shortened their useful life. It is my opinion that the *I'm Alone* was a victim of these circumstances.

3. Twin engines, installed aft on each side of the longitudinal structure of a vessel, have a tendency to vibrate and shake the hull more than one engine installed over the center



of the longitudinal structure, namely; keelson, floor timbers, dead-wood, and keel. Engine beds built on the sides are supported by and fastened through, or should be, the ceiling, frame, and outside planking. Vibrations of engines and hull tend to shorten the life, or usefulness of both, especially when the former are running on insecure foundations and doubtful alignment. I believe that in the case of the *I'm Alone*, the "big power" (appendix 1[6], page 5[33]) was installed in a hull hardly strong enough to stand up under that power. Therefore, extra strength was built into the after part of the hull to meet, so far as possible, the inadequacies. Evidently the party who was having the *I'm Alone* built was aware of all this, for his statement regarding his instructions to the builders bears this out (appendix 1[6], page 5[33]).

4. The sale of the *I'm Alone* to Christian Iversen, of Lunenburg, N.S., for the alleged price of \$10,000.00 (appendix 1[6], page 7[35]) was probably the fair speculative value of the vessel in 1928. She was then about four years and six months old. This transaction, in my opinion, reflects or confirms, the rapid depreciation of vessels of her rig, model, construction, and engine power, when used in the rum-running trade, where they are obliged to keep to sea for months, in all weathers, and especially when stress of sail, combined with the full power of the engines, are used in frequent hot pursuits and get-aways. For instance, granting that the first cost to the owners of the *I'm Alone*, as a unit, complete, was \$48,337.35 (note below); and that the cost of the radio plant, installed two years later, November 24, 1925, was \$3935.00 (Canadian Claim, p. 15, appendix D); then, the sale to Iversen, including the radio plant, for \$10,000.00,

---

NOTE:

Value of hull, etc.	\$25, 000. 00 A
Value of engines, etc.	21, 000. 00 B
Value of heating plant, etc.	2, 033. 50 C
Value of cabin dishes, etc.	127. 10 E
Value of galley cooking utensils	\$ 176. 75 F

Total

\$48, 337. 35

shows a depreciation absorbed by her various owners, as per Registry, during her then age, about four years and six months, of around \$40,000.00.

5. As it appears, Iversen had the *I'm Alone* in Lunenburg about two months, during which time he removed her deck house, built on her deck in July, 1924, when she was nine months old. (Registry, July 31, 1924.) This alteration reduced her registered tonnage 23.71 tons, back to her original registered tonnage of 90.45 tons (Registry, May 3, 1928). It further appears that Iversen hauled her out, and had her engines overhauled by the Lunenburg Foundry (appendix 2 [4], page 20 [27]). The *I'm Alone* was purchased by Marvin J. Clark, acting for himself, Danny Hogan and Frank H. Reitman, for \$18,000. plus the currency exchange, September 28, 1928 (appendix 2 [4], pages 17 [24] and 21 [28]), and the vessel was registered in the name of the Eastern Seaboard Steamship Agencies, Limited. It is my opinion that at this sale the price paid for the vessel was close to her value then.

6. About nine months elapsed between the time the *I'm Alone* was overhauled, and sold by Iversen, to the time when she was sunk on March 22, 1929. Four months of this time, according to the records, she was plying her trade in Southern waters between Belize and off-Gulf ports. Wooden vessels trading out South in Southern waters are not always metaled. In late years copper paint or anti-fouling compositions have been used instead of metal to retard marine growth, and especially, to prevent their bottom planking from being eaten up with worms. To prevent worms getting into a wooden vessel's bottom in Southern waters, it is common practice to haul the vessel out, and paint her bottom at least every six months. The question of whether or not the *I'm Alone's* underwater body was newly painted before she was taken South, or this precaution neglected, is important in determining her fair value. The only evidence I have bearing on this is the deposition of the engineer, wherein he said: ". . . It was quite a good while since we were docked and the bottom was pretty dirty"

(Arbitration Series No. 2 (1) p. 9) and, from the earlier history of the *I'm Alone's* operations, wherein she "cleared Lunenburg for Habana", August 5, 1924, and arrived in Matanzas, Cuba, August 20, 1924 (Arbitration Series No. 2 (3), p. 13). She was at this time ten months old. Without more conclusive information, this question of whether or not the *I'm Alone's* bottom was wormed, cannot be answered, and I shall endeavor to leave the subject without prejudice.

7. According to the captain's evidence, her port engine was in bad condition, with at least one bottom bearing burned out. (Arbitration Series No. 2 (1) p. 8). Further by the engineer's statement:

The condition in which the shape of the engines were we could not do better than  $7\frac{1}{2}$  knots . . . (Arbitration Series No. 2 (1) p. 9).

The falling off of the *I'm Alone's* speed, with power, or with sail and power, reflects badly worn engines, and a weakening hull, even after being overhauled nine months before by Captain Iversen. (Registry, alterations.)

8. The desirability for use of vessels of the *I'm Alone's* type, condition and age, in any commercial trade, would be practically nothing. I feel that her useful life as a run-runner was fast drawing to a close. Therefore, I believe her fair value, as of March 22, 1929, to be TEN THOUSAND DOLLARS (\$10,000.00).

JOHN I. SNOW

Sworn to and subscribed before me this 21st day of May, 1934, at Rockland, Maine.

[SEAL]

FRED C. LINDSEY, JR.

Notary Public, Knox County, State of Maine.  
Commission expires Feb. 7, 1935.

## APPENDIX 10

### Affidavit of Edgar Roderic Williams, Dated December 20, 1933

COLONY OF BERMUDA CITY OF HAMILTON CONSULATE OF THE UNITED STATES OF AMERICA	}	ss
---	---	----

Edgar Roderic Williams being duly sworn deposes and says: that he is, and has been for the last thirteen years, a partner of the firm J. E. Lightbourn & Company of Hamilton, Bermuda; that he is familiar with the wholesale prices of wines and liquors prevailing in Bermuda on March 22, 1929; and that to the best of his knowledge and belief the wholesale values in Bermuda of the liquors alleged to have constituted the cargo of the *I'm Alone* on March 22, 1929, would have been as follows:

1 cs. Carta Oro Rum—2 glns.....	\$16.
1 cs. Cherry Brandy—2 glns.....	11.
1 cask 10 glns. Rum—10 glns.....	50.
50 d'johns Rum—50 glns.....	200.
(n.b. 10 d'johns shortshipped)	
5 bls. ea. 10 d'johns Rum—50 glns.....	250.
300 cs. Johnny Walker Whiskey, black label—597.67	
glns. 14 bots. out.....	7, 022. 58
1000 cs. Wm. Penn Whiskey (Pints) 2400 glns.....	15, 000.
1500 cs. Wm. Penn Whiskey (Quarts) 3600 glns.....	21, 000.
	\$43, 549. 58

The deponent further states that neither he nor the firm with which he is associated were in any way interested in the cargo of the *I'm Alone* on March 22, 1929, or on any other date, nor did he have any knowledge as to the cargo on board

said vessel on that date; but that the above values are given merely on the basis of the list as submitted to him.

EDGAR RODERIC WILLIAMS

Subscribed and sworn to before me this 20th day of  
December 1933.

(SEAL)

CLAY MORRELL

*Vice Consul of the United States  
of America*

No. 1257

No fee prescribed.









**JOINT FINAL REPORT OF THE COMMISSIONERS DATED  
THE 5th JANUARY, 1935**

The Honourable the Secretary of State  
for the United States of America; and  
The Right Honourable  
The Minister of External Affairs for Canada.

**EXCELLENCIES:**

The Commissioners appointed respectively by the High Contracting Parties pursuant to Article 4 of the Convention of the 23rd of January, 1924, between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, and the President of the United States of America, did, on the 30th of June, 1933, present an interim report and recommendations concerning the matters submitted to them for consideration.

The interim report and recommendations are before Your Excellencies.

The Commissioners therein returned answers to certain preliminary questions, set forth in a direction given by them on the 28th January, 1932, in relation to which the agents and counsel of the High Contracting Parties had submitted briefs and oral argument.

Only questions numbered One and Three and the answers given thereto are now material. These are stated in the interim report as follows:—

“The question numbered one is in the following terms:—

The first question is whether the Commissioners may inquire into the beneficial or ultimate ownership of the *P'm Alone* or of the shares of the corporation that owned the ship. If the Commissioners are authorized to make this inquiry, a further question arises as to the effect of indirect ownership and control by citizens of the United States upon the Claim; viz., whether it would be an answer to the Claim under the Convention, or whether it would go to mitigation of damages, or whether it would merely be a circumstance that should actuate the claimant Government in refraining from pressing the claim, in whole or in part.

“The answer given to this question is as follows:—

The Commissioners think they may inquire into the beneficial or ultimate ownership of the *I'm Alone* and of the shares of the corporation owning the ship; as well as into the management and control of the ship and the venture in which it was engaged; and that this may be done as a basis for considering the recommendations which they shall make. But the Commissioners reserve for further consideration the extent to which, if at all, the facts of such ownership, management and control may affect particular branches or phases of the claim presented.”

“The question numbered three is in the following terms:—

The third question is based upon the assumption that the United States Government had the right of hot pursuit in the circumstances and was entitled to exercise the rights under Article 2 of the Convention at the time when the *Dexter* joined the *Wolcott* in the pursuit of the *I'm Alone*. It is also based upon the assumption that the averments set forth in paragraph eight of the Answer are true. The question is whether, in the circumstances, the Government of the United States was legally justified in sinking the *I'm Alone*.

“The answer given to this question is as follows:—

On the assumptions stated in the question, the United States might, consistently with the Convention, use necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port the suspected vessel; and if sinking should occur incidentally, as a result of the exercise of necessary and reasonable force for such purpose, the pursuing vessel might be entirely blameless. But the Commissioners think that, in the circumstances stated in paragraph eight of the Answer, the admittedly intentional sinking of the suspected vessel was not justified by anything in the Convention.”

The preliminary questions having been answered, the Commissioners made the following recommendations as to the future conduct of the case:

“First: that the agents be instructed by their respective Governments to prepare and submit to the Commissioners separate statements setting forth in de-

tail the contentions of their respective Governments as to the ultimate beneficial interests in the vessel and in the cargo, together with specifications of the documents and witnesses relied upon to substantiate their respective contentions:

“Second: that the agents be similarly instructed to submit to the Commissioners either a joint statement or separate statements (in either case specifically itemized) of the sums which should be payable by the United States in case the Commissioners finally determine that compensation is payable by that Government.”

Statements were submitted to the Commissioners pursuant to these recommendations; and, on the 28th of December, 1934, the Commissioners convened for the purpose of hearing further evidence and oral argument touching the matters in dispute; and the hearing was concluded on the 3rd of January, 1935. The Commissioners now present their joint final report.

It will be recalled that the *I'm Alone* was sunk on the 22nd day of March, 1929, on the high seas, in the Gulf of Mexico, by the United States revenue cutter *Dexter*. By their interim report the Commissioners found that the sinking of the vessel was not justified by anything in the Convention. The Commissioners now add that it could not be justified by any principle of international law.

The vessel was a British ship of Canadian registry; after her construction she was employed for several years in rum running, the cargo being destined for illegal introduction into, and sale in, the United States. In December, 1928, and during the early months of 1929, down to the sinking of the vessel on the 22nd day of March, of that year, she was engaged in carrying liquor from Belize, in British Honduras to an agreed point or points in the Gulf of Mexico, in convenient proximity to the coast of Louisiana, where the liquor was taken from her in smaller craft, smuggled into the United States, and sold there.

We find as a fact that, from September, 1928, down to the date when she was sunk, the *I'm Alone*, although a British ship of Canadian registry, was *de facto* owned, controlled, and at the critical times, managed, and her movements directed and her cargo dealt with and disposed of, by a group of persons acting in concert who were entirely, or nearly so, citizens of the United States, and who employed her for the purposes mentioned. The possibility that one of the group may not have



been of United States nationality we regard as of no importance in the circumstances of this case.

The Commissioners consider that, in view of the facts, no compensation ought to be paid in respect of the loss of the ship or the cargo.

The act of sinking the ship, however, by officers of the United States Coast Guard, was, as we have already indicated, an unlawful act; and the Commissioners consider that the United States ought formally to acknowledge its illegality, and to apologize to His Majesty's Canadian Government therefor; and, further, that as a material amend in respect of the wrong the United States should pay the sum of \$25,000 to His Majesty's Canadian Government; and they recommend accordingly.

The Commissioners have had under consideration the compensation which ought to be paid by the United States to His Majesty's Canadian Government for the benefit of the captain and members of the crew, none of whom was a party to the illegal conspiracy to smuggle liquor into the United States and sell the same there. The Commissioners recommend that compensation be paid as follows:—

For the captain, John Thomas Randell, the sum of..	\$7,906.00
For John Williams, deceased, to be paid to his proper representatives.. . . . .	1,250.50
For Jens Jansen.. . . . .	1,098.00
For James Barrett.. . . . .	1,032.00
For William Wordsworth, deceased, to be paid to his proper representatives.. . . . .	907.00
For Eddie Young.. . . . .	999.50
For Chesley Hobbs.. . . . .	1,323.50
For Edward Fouchard.. . . . .	965.00
For Amanda Mainguy, as compensation in respect of the death of Leon Mainguy, for the benefit of herself and the children of Leon Mainguy, (Henriette Mainguy) Jeanne Mainguy and John Mainguy) the sum of.. . . . .	\$10,185.00

In submitting this, their final report,

The Commissioners have the honour to be, Excellencies,

Your most humble, obedient servants,

WILLIS VAN DEVANTER  
LYMAN P. DUFF

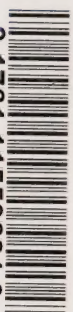
5th January, 1935.











3 1761 11553601 3